

1997 - 2001

**ANNUAL
REPORTS**

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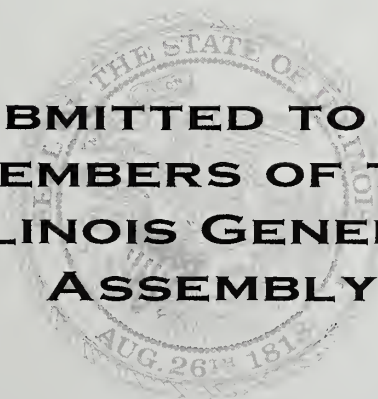
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— OF THE
**JOINT COMMITTEE
ON ADMINISTRATIVE
RULES** —

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1997 - 2001
ANNUAL REPORTS

of the

JOINT COMMITTEE ON ADMINISTRATIVE RULES

*Submitted to the Members of the
Illinois General Assembly*

Senator Barack Obama, Co-Chair
Representative Art Tenhouse, Co-Chair

Senator J. Bradley Burzynski
Representative Tom Cross
Representative Steve Davis
Senator Doris Karpel
Senator Lisa Madigan
Representative Phil Novak
Senator William L. O'Daniel
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JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. BARACK OBAMA

CO-CHAIR:
REP. ART TENHOUSE

EXECUTIVE DIRECTOR:
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SEN. STEVE RAUSCHENBERGER
REP. TOM CROSS
REP. STEVE DAVIS
REP. PHIL NOVAK
REP. DAN RUTHERFORD

HONORABLE MEMBERS OF THE 92ND GENERAL ASSEMBLY:

As Co-Chairs of the Joint Committee on Administrative Rules, we hereby submit the 1997-2001 Annual Reports of that Committee. An overview of the Committee's rules review activities can be found in the following pages.

The Joint Committee on Administrative Rules gratefully acknowledges your continued support and assistance, and we encourage all members of the General Assembly to take an active role in this vital oversight function guaranteeing that the public right to know is protected through the promulgation of specific rules that are applied equally to everyone regulated. We welcome your suggestions and comments on agency rules and the role of the Committee. Only as each elected representative becomes concerned and involved in the oversight process can the Committee ensure that the intent of the legislation we pass is maintained.

Respectfully,

Senator Barack Obama
Co-Chairman

Representative Art Tenhouse
Co-Chairman

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JCAR

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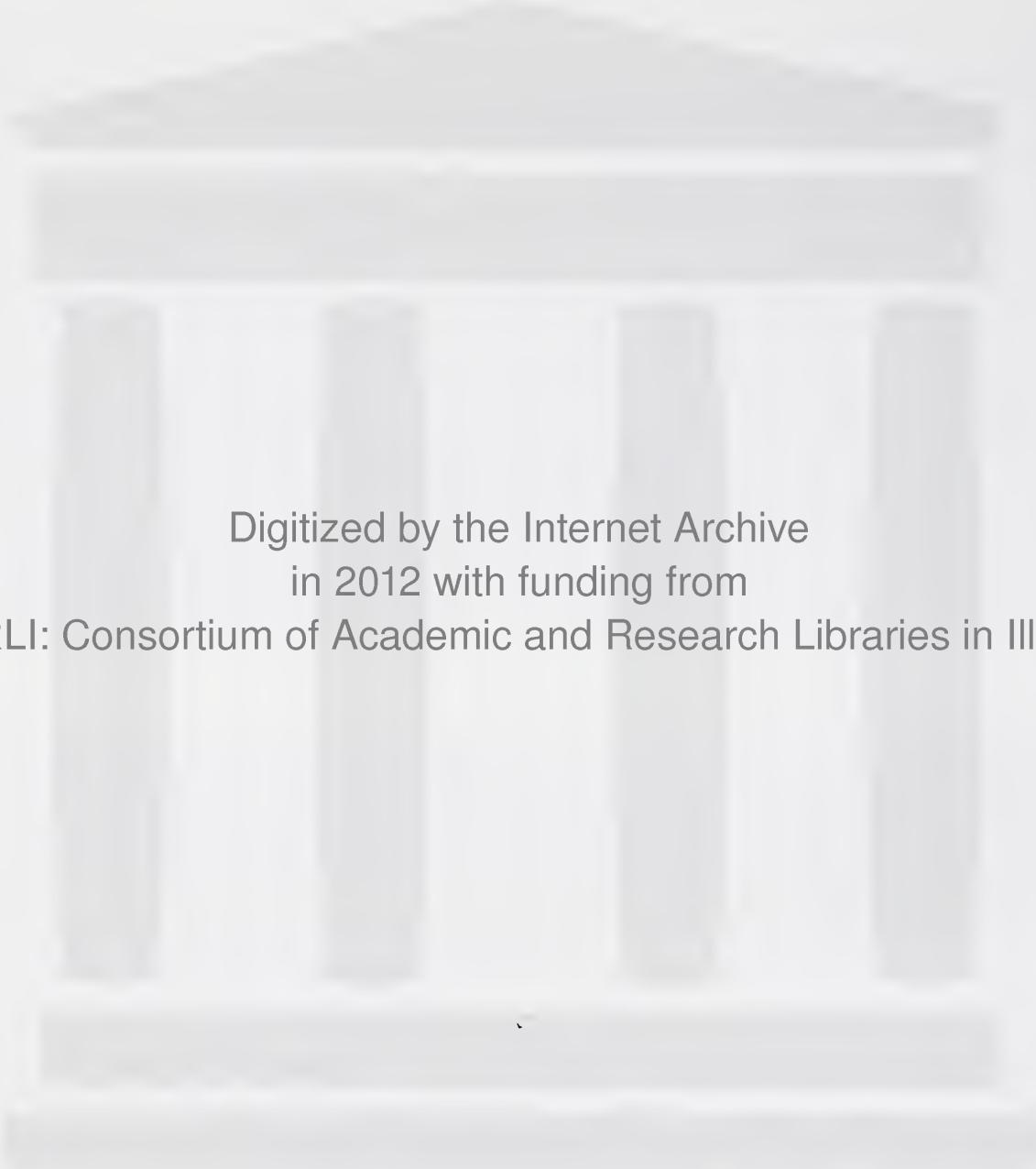
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JCAR

ITS CREATION AND ITS PURPOSE

CREATION

The Illinois General Assembly created the Joint Committee on Administrative Rules (JCAR) in 1977 and delegated to it the responsibility of the legislative branch to ensure that the laws it enacts are appropriately implemented through administrative law. The specific duties and authorities of JCAR are outlined in the Illinois Administrative Procedure Act (IAPA), as is the Illinois rulemaking process.

RESPONSIBILITIES

The Committee's principal programs and activities include:

- *Review of general rulemaking.* In the course of this review, JCAR seeks to facilitate involvement by the affected public and to make the review process a timely and efficient one that assists State agencies in their goal of enacting the best administrative law possible.
- *Review of emergency and preemptory rulemakings* to ensure that they are justifiable within the IAPA's limitations on these types of rulemakings. Emergency and preemptory rulemakings are not subject to the IAPA's public comment period, and thus should be used conservatively.
- *Review of existing agency rules and policies* to determine if they have been properly promulgated, are unauthorized or unreasonable, or result in serious negative impact on the citizens of this State. These reviews can be undertaken upon JCAR's own initiative or in response to a complaint from the public.
- *Public Act review* to determine the necessity for new or amendatory rulemaking in response to legislative changes. JCAR devises a list of laws it believes may generate rulemaking activity, shares that list with the agencies, and monitors agency activity to determine if appropriate action is taken.
- *Legislative activities.* JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations.
- *Public information.* JCAR provides information on rules and the rulemaking process to legislators and the public through several conduits. First, JCAR publishes *The Flinn Report: Illinois Regulation*, a free weekly newsletter that summarizes State agency rulemaking activities. The newsletter is used by many as an alternative to subscribing (\$290/yr.) to the *Illinois Register* and is now available on-line, as well as by mail. The newsletter highlights the major issues; the reader can then seek a copy of the specific rulemaking or further in-

formation from the proposing agency. Second, JCAR has created and maintains, on the Legislative Information System's computers, the *Illinois Administrative Code* database. The database is used in the publishing of the *Code* by the Secretary of State's Index Department and by private publishers who have been licensed to use the database. The *Illinois Register* is also now being published from the database. State agencies can access the database by downloading their Parts for use on their PCs or through LIS connections. By the end of 2002, this database will make internet access to both the *Code* and the *Register* possible. Third, JCAR staff is always available to respond to inquiries from General Assembly members and the public. (For information, or to be added to the *Flinn Report* mailing list, call 217/785-2254 or contact JCAR by e-mail at jcar@legis.state.il.us.)

THE REVIEW PROCESS ---

The JCAR membership meets at least once each month to consider an agenda that generally includes from 50 to 100 separate rulemakings by State agencies. In a year's time, JCAR will review approximately 20,000 pages of rule. The IAPA dictates that the Committee's analysis of rulemakings be based on such concerns as statutory authority and legislative intent; necessity of the regulation; economic impact on State government and the affected public; completeness and appropriateness of standards to be relied upon in the exercise of agency discretion; effect on local government through the creation of a mandate; adherence to IAPA rulemaking requirements; and form.

JCAR's review of agency regulatory proposals is predominantly substantive. Its major concern is that statutory law is applied fairly and consistently, creating as little paperwork and economic burden for the affected public as possible. The Committee serves as the final avenue for input from the public before a rulemaking is formally adopted. Recommendations from the public are always welcome and are actively sought. The Committee recognizes that no one is as qualified to comment on the appropriateness and practicality of a proposed regulation as the individual whose activities or business practices will be affected by that regulation. Comment on any proposed or existing State regulation may be submitted to the Committee at 700 Stratton Building, Springfield IL 62706, or by calling 217/785-2254.

JCAR's perusal of agency rulemakings serves a technical purpose as well. The various rulemakings of the State agencies collectively comprise the *Illinois Administrative Code*. In giving a final technical review to each agency proposal, JCAR, along with the Secretary of State's Index Department, strives to achieve some degree of consistency among the individual agencies' portions of the *Code*, and to make the *Code* as readable and understandable for the public as possible.

ANNUAL REPORT ---

This Report covers 5 years--1997 to 2001. The narratives of JCAR activity from 1997 and 2001, as well as the statistical summaries of the rulemaking activities of State agencies, are separated by year. The summary of legislation affecting JCAR is a single review of the 90th and 91st GA, plus the first half of the 92nd GA. This Report also includes a historical overview of the Committee, as well as pertinent historical statistics, and the most recent version of the Illinois Administrative Procedure Act.

JCAR MEMBERSHIP

The Joint Committee on Administrative Rules consists of 12 legislators who are appointed by the General Assembly leadership. Membership is equally apportioned between the 2 houses and the 2 political parties. Two Co-chairs are selected by the Committee membership or appointed by the leaders, as provided by law. The Co-chairs are not members of the same house or the same party.

1997 - 1998 MEMBERS ---

Senator Donne E. Trotter, Co-Chair
Senator J. Bradley Burzynski
Senator Beverly Fawell
Senator William O'Daniel
Senator Steve Rauschenberger
Senator Jim Rea

Representative Tom Ryder, Co-Chair
Representative Bill W. Balthis
Representative Mary Lou Cowlshaw
Representative Charles Hartke
Representative Phil Novak
Representative Coy Pugh
Representative Dan Rutherford
Representative Larry Woolard

1999 - 2000 MEMBERS ---

Senator Donne E. Trotter, Co-Chair (1999)
Senator Barack Obama, Co-Chair (1999-2000)
Senator J. Bradley Burzynski
Senator Beverly Fawell
Senator Doris Karpel
Senator Lisa Madigan
Senator William O'Daniel
Senator Steve Rauschenberger
Senator Jim Rea

Representative Tom Ryder, Co-Chair
Representative Mary Lou Cowlshaw
Representative Tom Cross
Representative Jim Meyer
Representative Phil Novak
Representative Coy Pugh
Representative Dan Rutherford
Representative Larry Woolard

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Senator Barack Obama, Co-Chair
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Senator Doris Karpel
Senator Lisa Madigan
Senator William O'Daniel
Senator Steve Rauschenberger

Representative Tom Ryder, Co-Chair
Representative Art Tenhouse Co-Chair
Representative Tom Cross
Representative Steve Davis
Representative Phil Novak
Representative Coy Pugh
Representative Dan Rutherford
Representative Todd Stroger
Representative Larry Woolard

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Glen L. Bower
Jack E. Bowers
Woods Bowman
John W. Countryman
John Cullerton
Michael Curran
Richard M. Daley
Vince Demuzio
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Carl E. Hawkinson
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Emil Jones, Jr.
Jeremiah E. Joyce
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Thaddeus "Ted" Lechowicz
Larry Leonard
Ellis Levin
Richard Luft
John W. Maitland, Jr.
Lynn Martin

John M. Matejek
Roger McAuliffe
Thomas J. McCracken, Jr.
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Myron J. Olson
David J. Regner
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Philip J. Rock
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Frank D. Savickas
Sam Vinson
Richard A. Walsh
Larry Wennlund
Robert C. Winchester
Kathleen Wojcik
Harry "Babe" Woodyard
Harry "Bus" Yourell

ILLINOIS RULEMAKING PROCESS

Law basically exists in 4 forms: constitutional law, statutory law, administrative law and case law. Constitutional law creates broad guidelines. Legislation creates specific restrictions, authorities and programs. Administrative law adds the detail often necessary to implement statutory law. If these 3 categories of law do not sufficiently address all the variables, case law evolves.

In 1975, the Illinois General Assembly enacted the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100] to create a procedure through which administrative agencies would exercise the authority delegated to them by the legislature to create administrative law through the adoption of agency regulations. In 1977, the IAPA was amended to add a process by which the General Assembly would oversee the exercise of this delegated authority through the Joint Committee on Administrative Rules (JCAR), a service agency of the General Assembly.

Rules of an administrative agency are valid and enforceable only after they have been through the rulemaking process prescribed in the IAPA. Rules are for the purpose of interpreting or implementing provisions of a statute and may not actually expand or limit the scope of the statute.

TYPES OF RULEMAKINGS

Proposed Rules. These can be new rules or amendatory rulemakings. Frequently this is referred to as “regular rulemaking”. A 2-step (First Notice and Second Notice) process is followed, requiring from 90 - 365 days. Aside from the basic 90 days, the agency basically controls the timing. Both the general public and the General Assembly, through JCAR, can have input prior to adoption.

Emergency Rules. Rules are effective immediately upon the agency filing them with the SOS or within 10 days after filing. These rules can be developed unilaterally by the agency; JCAR reviews after the rules are adopted. An emergency rulemaking lasts 150 days unless an earlier date is specified. Emergency rulemaking can only be used if the agency finds a threat to the public interest, safety or welfare exists that the rulemaking will address.

Peremptory Rules. The IAPA provides for the immediate adoption of a rule which is required as a result of a federal law, federal rule, collective bargaining agreement, or a court order under conditions that preclude discretion by the agency concerning the rule’s content. Peremptory rules are effective upon filing with the SOS or on the date required by the federal law, federal rule or court order. JCAR reviews these rules after their adoption for proper use of the procedure.

Exempt or Identical in Substance Rules. The IAPA and the Environmental Protection Act create a special process through which PCB can adopt environmental regulations that are identical in substance to federal regulations that the State is required to adopt and enforce. These rulemakings are reviewed by JCAR, after adoption, for proper use of the exempt process.

Required Rulemaking. These are rules of an agency that can be adopted unilaterally by the agency by filing with the SOS. Examples are organization charts, principal address, Freedom of Information Act information, hearing officer qualifications, etc.

THE PROCESS

Drafting of Rules. Administrative rules are drafted by State agencies; there is no central drafting bureau as for statutes. The involvement of the public in the initial drafting is at the discretion of the agency; however, the IAPA encourages early public involvement and now requires agencies to semiannually publish a Regulatory Agenda indicating, to the best of the agency's knowledge, the scope of the next 6 months' rulemaking activity.

First Notice. The First Notice period commences upon publication of an agency's Notice of Rulemaking in the *Illinois Register*. First Notice lasts a minimum of 45 days and terminates when the agency files with JCAR, commencing the Second Notice period. The only limitation is that a rulemaking expires if not adopted within 1 year after commencement of First Notice.

During this time, Department of Commerce and Community Affairs reviews each proposed rulemaking to determine possible impact on small business. This 45 day period is designed for the receipt and evaluation of public comment. A public hearing may or may not be held during this period. The agency can volunteer to hold a hearing or must conduct one at the request of the Governor, JCAR, an association representing over 100 persons, 25 individuals, or a local government. Requests for hearing must be filed within 14 days after publication of the First Notice.

Second Notice. Second Notice commences upon the agency's filing of the Second Notice with JCAR and lasts for a maximum of 45 days, unless extended for an additional 45 days by mutual agreement of JCAR and the agency. During the Second Notice Period, legislative review of the rules is conducted first by the JCAR staff and then at a meeting of the legislative members. JCAR reviews the proposed rules for statutory authority, propriety, standards for the exercise of discretion, economic effects, clarity, procedural requirements, technical aspects, etc.

During the JCAR review, JCAR and the agency can agree to modifications in the rulemaking that are adopted through written JCAR Agreements. The Agreements are appended to the Certificate of No Objection issued by JCAR at its regular meeting, and are still applicable if no Certificate is issued but the agency proceeds to adopt. If the agency does not choose to modify a rulemaking or if policy differences cannot be resolved during the review process, JCAR can take one of several actions.

JCAR Motions.

Certificate of No Objection. With the Certificate, the agency can proceed to adopt the rules by filing them with the SOS for publication in the *Illinois Register*.

Recommendation. (Issued along with a Certificate of No Objection) The agency must respond to the Recommendation in writing within 90 days and can modify or withdraw the rule in response to a JCAR Recommendation. (After going to Second Notice, the agency cannot unilaterally modify/withdraw a

rulemaking.) However, the agency can also adopt the rules with no changes at anytime after receipt of the Certificate of No Objection.

Objection. An agency has to respond to an Objection in writing within 90 days, but after responding can proceed to adopt. The agency can modify or withdraw in response to a JCAR Objection or adopt the rules without changes. JCAR Agreements still apply.

Filing Prohibition/Suspension. If JCAR determines that a rulemaking constitutes a threat to the public interest, safety or welfare, the members can, by a 3/5 (8 members) vote, prohibit filing of a proposed rulemaking (or suspend an emergency or peremptory rulemaking). As a result, the proposed rulemaking may not be accepted for filing by the Secretary of State or enforced by the agency, or an emergency or peremptory rulemaking that has already been adopted becomes null and void, for a period of 180 days. A prohibition or suspension lasts for a maximum of 180 days, within which the JCAR action may be rescinded if the agency offers to withdraw or modify the rulemaking. If no modification or offer to withdraw are forthcoming from the agency, JCAR is to cause a Joint Resolution to be introduced in the General Assembly through which the General Assembly may permanently continue the prohibition/suspension.

PUBLIC NOTIFICATION

Illinois Register is the official State publication through which the public is informed of rulemaking activity. The *Illinois Register* is published by the Secretary of State every Friday, from the JCAR/LIS database, and contains First Notice publication of rulemaking proposals, JCAR actions, a list of second notices received by JCAR, notices of final adoption of rulemakings, regulatory agendas (in January and July), executive orders and proclamations, and quarterly indexes to the current and previous issues. Over the course of a year, the *Register* may contain almost 25,000 pages and may be ordered from the Secretary of State for \$290/year. The *Register* is currently available electronically through several publishers, also.

The Flinn Report: Illinois Regulation is a 4-6 page weekly publication by JCAR that summarizes the rulemaking activity depicted in the matching issue of the *Illinois Register*. The *Flinn Report* is mailed free of charge to anyone who requests it and is also available weekly on the General Assembly's website at www.legis.state.il.us.

Illinois Administrative Code. The compilation of all agency rules is known as the *Illinois Administrative Code*. The *Code* is larger than the Illinois Compiled Statutes. The *Code* is maintained electronically by JCAR/LIS. That database is used by the Secretary of State to publish the *Code* on CD Rom and also is used to make all or parts of the *Code* available on-line through several publishers who contract for this service. Such contracts may include weekly JCAR updates of the *Code* text. Currently, no hardcopy version of the complete *Code* is being published.

Both the *Register* and the *Code* are available on the LIS system and, through the State computer center, to attached libraries. By the close of 2002, they will be available on the internet. As both the *Register* and *Code* have been placed in the public domain, anyone who wants to create their own database or source material can publish. However, the database is owned by the General Assembly and to use it, private publishers contract with JCAR. Great strides in making both the *Register* and the *Code* more accessible have been accomplished in the past few years.

PUBLIC PARTICIPATION

One of the main reasons the IAPA was enacted was to give the public input into the regulatory process. Any interested persons may contact an agency during the First Notice period to record a position on a rulemaking proposal. The IAPA specifically states that the agency can modify the rulemaking in response to public comment before going to Second Notice. Additionally, most agencies consult with their identified interest groups during the pre-First Notice drafting process.

When the rulemaking goes to Second Notice, JCAR receives a copy or summary of all written comment submitted to the agency. In addition, the public may contact JCAR directly, and frequently does so if the agency refused to modify in response to public comment, or if they discovered the existence of the proposal too late for the First Notice public comment period.

Public comment is vital to the JCAR review process. Frequently, it is only through this comment that the Committee can fully recognize the effect of a rule on the individual, business or local government that has to adhere to it on a daily basis.

The public may also lodge complaints about existing rules outside the process for adopting and amending rules. Agencies are required to allow the public to suggest rule revisions. Additionally, JCAR may open an investigation into an existing rule on its own volition or based on public complaint.

1997 GENERAL RULEMAKING

In 1997, JCAR reviewed 599 rulemakings, including 496 general rulemakings, 88 emergencies, 9 peremptories and 6 Pollution Control Board exempt rulemakings. JCAR voted 1 Prohibition, 8 Objections and 8 Recommendations on general rulemakings and 1 Suspension, 4 Objections and 2 Recommendation to emergency rulemakings. The most significant of the 1997 JCAR actions on proposed rulemakings are discussed here.

Department of Revenue proposed a rulemaking to limit a statutory ROT exemption for tangible personal property purchased for use in infrastructure repairs required because of a State or federally-declared disaster to the time during which the equipment is used for making disaster-related repairs. The rulemaking stated that, when the materials or equipment is used in a non-exempt manner, the purchaser is liable for Use Tax or Service Use Tax on the depreciated remaining value of the material or equipment. While this view might be appropriate when applied to materials, JCAR questioned its applicability to equipment. JCAR argued that the General Assembly created the exemption to encourage persons to purchase the equipment needed to respond to a disaster as quickly as possible and that to reinstate the tax on any value of the equipment remaining after the remediation of the disaster would undermine that incentive. JCAR issued an Objection at its February meeting based on a lack of specific statutory authority to restrict an incentive created by the General Assembly in a manner not anticipated by the General Assembly. Additionally, this rulemaking would have an undue economic impact on small businesses that made use of the incentive when the State was in need of their participation in infrastructure repairs, unaware that DOR would be attempting to collect a portion of the tax at a later date. As a result of the Objection, DOR withdrew the rulemaking.

The Property Tax Appeals Board proposed rules implementing the statutory extension of its jurisdiction to Cook Co. At its February meeting JCAR issued an Objection because the rule contravened statute by precluding taxing districts from filing an appeal with PTAB when the taxpayer has opted to petition the circuit court rather than PTAB. The Property Tax Code explicitly precludes taxpayers from filing objections based on valuation with both PTAB and the court system, but does not apply the same limitation to taxing bodies. In response to the Objection, PTAB withdrew the objectionable provision and promised to seek legislation to clarify the issue of joint adjudication if it chose in the future to pursue this policy. PTAB has not done so.

Department of Natural Resources proposed to eliminate commercial perch fishing in Lake Michigan. JCAR determined that the rulemaking threatened the public interest by severely damaging small businesses without proving that those enterprises have been the direct cause of the diminishment of Lake Michigan yellow perch nor that prohibiting the taking of perch by these small businesses would result in the revitalization of the perch population. JCAR objected to and prohibited the filing of the rulemaking and recommended that DNR meet with the affected licensees. DNR responded at the April meeting by providing stronger substantiation for the rulemaking, resulting in JCAR's withdrawal of the filing prohibition.

Pollution Control Board proposed a package to implement the federal Great Lakes Initiative, one element of which phased out bioaccumulative chemicals of concern (BCCs) mixing zones – areas near a discharge source where water with BCCs are initially mixing with the surrounding waters and where concentrations are allowed to be higher. At its December meeting, JCAR recommended that PCB reconsider the mixing zone phase out because, with respect to the federal regulations, a federal court ordered that provision vacated because of insufficient economic impact analyses. The Environmental Protection Act requires that PCB regulations be consistent with federal regulations. By including the phase out in this rulemaking, PCB was not maintaining that consistency, with the potential result that Illinois industries could be placed at a competitive disadvantage with respect to other states. PCB decided to retain the BCC mixing zone phase out because it believed USEPA would reinstitute it on the federal level. USEPA did so on 11/13/00.

1997
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	7
Department of Agriculture	14
Office of Banks and Real Estate	10
Capital Development Board	8
Carnival and Amusement Safety Board	2
Department of Central Management Services	12
Department of Children and Family Services	20
Department of Commerce and Community Affairs	3
Illinois Commerce Commission	14
Community College Board	2
Comptroller	2
Department of Corrections	6
CPA Board of Examiners (U of I)	1
Criminal Justice Information Authority	1
Debt Collection Board	1
State Board of Education	6
Educational Facilities Authority	1
State Board of Elections	5
Emergency Management Agency	1
Department of Employment Security	5
Environmental Protection Agency	11
Farm Development Authority	1
Department of Financial Institutions	3
State Fire Marshal	5
Gaming Board	1
Health Care Cost Containment Council	3
Health Facilities Planning Board	5
Historic Preservation Agency	1
Housing Development Authority	9
Human Rights Commission	1
Department of Human Rights	2
Department of Human Services	24
Department of Insurance	13
Department of Labor	3

Liquor Control Commission	1
Department of Natural Resources	35
Northeastern Illinois Planning Commission	1
Department of Nuclear Safety	5
Pollution Control Board	31
Department of Professional Regulation	19
Property Tax Appeal Board	3
Department of Public Aid	39
Department of Public Health	46
Illinois Racing Board	23
Department of Revenue	12
Board of Savings Institutions	1
Secretary of State	27
Division of Specialized Care for Children	1
State Employees Retirement System	2
Department of State Police	2
State Police Merit Board	3
State Universities Retirement System	3
Student Assistance Commission	35
Teacher's Retirement System	2
Toll Highway Authority	1
Department of Transportation	13
U of I	4
<hr/>	
TOTAL	512
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1997
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	7
Department of Agriculture	14
Office of Banks and Real Estate	10
Capital Development Board	8
Carnival and Amusement Safety Board	2
Department of Central Management Services	14
Department of Children and Family Services	27
Department of Commerce and Community Affairs	5
Illinois Commerce Commission	6
Comptroller	2
Community College Board	6
Department of Corrections	7
CPA Board of Examiners (U of I)	1
Criminal Justice Information Authority	1
Debt Collection Board	1
State Board of Education	5
Educational Facilities Authority	1
State Board of Elections	2
Emergency Management Agency	1
Department of Employment Security	5
Environmental Protection Agency	9
Farm Development Authority	1
Department of Financial Institutions	1
State Fire Marshal	5
Gaming Board	1
Health Care Cost Containment Council	3
Health Facilities Planning Board	4
Historic Preservation Agency	1
Housing Development Authority	3
Human Rights Commission	1
Department of Human Rights	1
Department of Human Services	28
Department of Insurance	13
Department of Labor	3

Liquor Control Commission	1
Department of Natural Resources	37
Northeastern Illinois Planning Commission	1
Department of Nuclear Safety	4
Pollution Control Board	29
Department of Professional Regulation	13
Property Tax Appeal Board	4
Department of Public Aid	50
Department of Public Health	35
Illinois Racing Board	24
Department of Revenue	20
Secretary of State	27
Division of Specialized Care for Children	1
State Employees Retirement System	2
Department of State Police	1
State Police Merit Board	1
State Universities Retirement System	4
Student Assistance Commission	35
Teacher's Retirement System	2
Toll Highway Authority	1
Department of Transportation	4
U of I	1

TOTAL	496
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1997
GENERAL RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Department on Aging	1	0	0
Department of Commerce and Community Affairs	1	0	0
Historic Preservation Agency	1	0	0
Department of Labor	0	1	0
Department of Natural Resources	1	1	1
Pollution Control Board	1	0	0
Department of Professional Regulation	1	0	0
Property Tax Appeal Board	0	1	0
Department of Public Aid	1	2	0
Department of Revenue	0	2	0
State Police Merit Board	1	1	0
TOTALS	8	8	1

1997
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	5	50%
Economic Impact on Affected Public	4	40%
Undue Hardship for the Affected Public	1	10%
TOTAL	10	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Economic Impact on Affected Public	1	11%
Further Rulemaking	4	44%
Need for Statutory Revision/Clarification	2	22%
Withdraw Rulemaking	1	11%
Refrain from Rules that Fail to Meet Federal Requirements	1	11%
TOTAL	9	100%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
Economic Impact on Affected Public	1	100%
TOTAL	1	100%

1997

EMERGENCY RULEMAKING

DOC adopted 2 emergency rulemakings, one of which required inmates to make a \$2 co-pay for non-emergency medical or dental services received outside the institution. If no liquid funds are available, the inmate's trust fund can be encumbered for later payment. The other rulemaking removed the provision allowing inmates to mail 3 letters/week at State expense and instead allowed them to borrow from the State against future personal trust fund money in order to send reasonable amounts of mail to the Administrative Review Board and the Prisoner Review Board. At its February meeting, JCAR recommended that DOC seek a statutory clarification that an inmate's trust fund can be encumbered in these ways. DOC agreed, but has never done so.

DCFS adopted by emergency rule new standards for licensure as a child welfare agency, repealing existing rules. However, the emergency rule applies to new applicants for licensure only, leaving no rules to govern existing licensees under the permanent rules, which govern both, could be adopted. At its August meeting, JCAR objected to the premature repeal and, in response, DCFS reinstated the rules for existing licensees.

DCFS adopted an emergency rule revising policy regarding employee conflict of interest. At its September meeting, JCAR objected because the rule contravened Executive Order 2 in some of the limitations it established; prematurely repealed conflict of interest regulations that were to continue to apply to current bargaining unit employees; and placed DCFS foster parent support specialists and master foster parents (DCFS contractors who, by the nature of their responsibilities, must be licensed foster parents who take payment directly from DCFS (i.e., must work through a supervising agency)) in the situation of either resigning from their positions, returning their foster children or taking no support for the foster children from DCFS. DCFS reinstated the existing rule, made the rule consistent with EO2, and exempted foster parent support specialists and master foster parents from the double dipping aspects of the rule.

1997
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Capital Development Board	1
Department of Central Management Services	4
Department of Children and Family Services	7
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	4
Department of Corrections	4
Criminal Justice Information Authority	1
Environmental Protection Agency	2
Gaming Board	1
Health Care Cost Containment Council	3
Health Facilities Planning Board	1
Housing Development Authority	3
Department of Human Services	8
Department of Insurance	3
Department of Natural Resources	1
Department of Nuclear Safety	1
Pollution Control Board	1
Department of Professional Regulation	4
Department of Public Aid	22
Department of Public Health	7
Department of Revenue	1
Secretary of State	4
State Employees Retirement System	2
State Universities Retirement System	1
Teacher's Retirement System	2
Department of Transportation	1
TOTAL	90

1997
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Capital Development Board	1
Department of Central Management Services	4
Department of Children and Family Services	8
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	3
Department of Corrections	4
Criminal Justice Information Authority	1
Environmental Protection Agency	2
Gaming Board	1
Health Care Cost Containment Council	3
Health Facilities Planning Board	1
Housing Development Authority	3
Department of Human Services	8
Department of Insurance	1
Department of Natural Resources	1
Department of Nuclear Safety	1
Pollution Control Board	1
Department of Professional Regulation	4
Department of Public Aid	22
Department of Public Health	7
Department of Revenue	2
Secretary of State	4
State Employees Retirement System	2
State Universities Retirement System	1
Teacher's Retirement System	1
Department of Transportation	1
TOTAL	88

1997
EMERGENCY RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Department of Children and Family Services	0	2	0
Department of Corrections	2	0	0
Department of Public Health	0	2	1
TOTALS	2	4	1

1997
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	1	17%
Lacks Sufficient Justification/Rationale	1	17%
Undue Hardship for the Affected Public	1	17%
Resulting Regulatory Deficiency	2	33%
Contravention of Executive Order	1	17%
TOTAL	6	100%

Basis for Recommendation	Number of Recommendation:	Percentage of Total
Need for Statutory Revision/Clarification	2	100%
TOTAL	2	100%

Basis for Suspension	Number of Suspensions	Percentage of Total
Statutory Authority/Legislative Intent	1	100%
TOTAL	1	100%

1997

PEREMPTORY & EXEMPT RULEMAKING

Agencies rarely avail themselves of peremptory rulemaking procedures due to the particular constraints placed on this procedure by the Administrative Procedure Act. Section 5-50 of the IAPA specifies that agencies may only use this short form rulemaking procedure, in which the rule is adopted without allowing a period of public and JCAR comment, if the rulemaking is required by federal law, federal regulation, court order or collective bargaining agreement and if the agency cannot exercise any discretion with respect to the language of the rule. Agencies must adopt the peremptory rule within 30 days after the change in rules is required.

Exempt rulemaking is a specialized form of rulemaking, similar to the peremptory rulemaking process, reserved for use by the PCB under EPAct. PCB can use this short form procedure only to adopt Illinois regulations that are "identical in substance" to mandated federal regulations. A public comment period is part of the exempt process, but substantive JCAR review is limited to a determination of whether use of the exempt process was appropriate.

In 1997, Department of Agriculture utilized peremptory rulemaking 6 times to adopt regulations identical to federal regulations and CMS 5 times to implement collective bargaining agreements. PCB adopted 19 rulemakings identical in substance to federal regulations.

JCAR did not take any action against peremptory or exempt rulemakings in 1997.

1997
PEREMPTORY & EXEMPT RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	6
Department of Central Management Services	5
Pollution Control Board	19
TOTAL	30

1997
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	6
Department of Central Management Services	3
Pollution Control Board	6
TOTAL	15

1997
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
	0	0	0
	0	0	0
	0	0	0
TOTALS	0	0	0

1997
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
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TOTAL	0	0%
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Basis for Recommendation	Number of Recommendations	Percentage of Total
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TOTAL	0	0%
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Basis for Suspension	Number of Suspensions	Percentage of Total
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TOTAL	0	0%
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1997
JCAR ASSESSMENT OF
APPROPRIATENESS OF AGENCY RESPONSE
TO JCAR ACTION

AGENCY	ASSESSMENT			
	APPROPRIATE	FAILURE TO REMEDY	JCAR WILL MONITOR	NO COMMENT
Department on Aging	1			
Department of Children and Family Services	2			
Department of Commerce and Community Affairs	1			
Department of Corrections	2			
Historic Preservation Agency			1	
Department of Labor	1			
Department of Natural Resources				1
Pollution Control Board			1	
Department of Professional Regulation	1			
Property Tax Appeal Board	1			
Department of Public Aid	2		1	
Department of Public Health	2			
Department of Revenue	2			
State Police Merit Board	1			
TOTAL	16	0	3	1

1998

GENERAL RULEMAKING

In 1998, the Joint Committee reviewed 651 rulemakings, including 506 general rulemakings, 104 emergencies, 16 peremptories and 25 Pollution Control Board exempt rulemakings. JCAR voted 9 Objections and 5 Recommendations on general rulemakings, 3 Objections and 1 Recommendation on emergency rulemakings, and 1 Objection to an exempt rulemaking.

Environmental Protection Agency proposed a rulemaking applying Lake Michigan Basin water rules to the National Pollutant Discharge Elimination System (NPDES) permit program in Illinois. The Attorney General suggested that EPA did not have clear statutory authority to promulgate 9 Sections of the rulemaking and that those Sections belong under Pollution Control Board jurisdiction. JCAR recommended, at its February meeting, that EPA continue to work with the AG to more clearly determine the relative jurisdictions of EPA and PCB in this matter and initiate further rulemaking to clarify this jurisdiction, if necessary. EPA submitted to the AG for his review a rulemaking giving authority under the disputed Sections to PCB. While this particular rulemaking was not moved again, EPA retooled the approach, without moving the 9 Sections to PCB, and the new rulemaking was adopted.

The Lottery proposed a rulemaking that, among other things, allowed it to offer the winners of past multi-year prizes, other than prizes for life, the option of liquidation at current cash value. At its April meeting, JCAR objected on the grounds that the rulemaking could create an adverse economic impact on past multi-year winners in that the IRS Doctrine of Constructive Receipt could be applied to all past multi-year winners, regardless of whether they choose to liquidate. The Lottery withdrew the provision allowing liquidation of past multi-year prizes.

Capital Development Board proposed a rulemaking implementing the School Construction Program. At its May meeting, JCAR recommended that, after considering its experience with the FY99 funding cycle for school construction grants, CDB review its List of Eligible School Construction Program Expenditures for Construction of New School Facilities and reflect funding eligibility policies contained in that document in the rules. CDB agreed, and anticipates doing this sometime during 2001.

Property Tax Appeal Board proposed a rulemaking establishing what it will consider to be sufficient probative evidence of the appropriate level of assessment for all classes of property in Cook Co. At the June meeting, JCAR issued an Objection because PTAB had no clear statutory authority for considering Department of Revenue's Annual Sales Ratio Studies in its review of Cook County property tax assessments. PTAB responded by removing specific reference to the Sales Ratio Studies; instead PTAB will consider any competent evidence that is relevant to the level of assessment applicable to the subject property under the State Constitution, the Property Tax Code and Cook County Real Property Assessment Classification Ordinance.

Department of Financial Institutions proposed a rule permitting currency exchanges to display only their maximum fees for services and various bracketed levels of monetary transactions, instead of their fee schedules, as required by the Currency Exchange Act. JCAR objected on statutory grounds at its August meeting. The rulemaking was withdrawn.

Illinois Commerce Commission proposed a rule requiring utilities to file for ICC review tariffs detailing their proposed tree-trimming practices. If ICC approves, then the practices preempt contrary municipal ordinances.

JCAR objected, at its October meeting, asserting that ICC lacked clear statutory authority to preempt municipal authority. ICC stated that while there is no explicit statute preempting municipal ordinances on tree-trimming, there is a line of cases supporting its authority to do so regarding the provision of services subject to the Public Utilities Act. ICC believed there was sufficient judicial support for its position and made no changes to the rule. JCAR published a Notice of Failure to Remedy.

Department of Transportation's implementation of the new Procurement Code included a method for publishing only change orders over a specified monetary threshold, which was contrary to the Code's requirement that all change orders be published. JCAR objected at its October meeting, although JCAR members acknowledged this matter may be one for future revision of the Code. DOT responded to the Objection by conceding that the Objection is supported by statutory language, but continuing to argue that other Code provisions support a different legislative intent. It declined to amend the provision and JCAR issued a Notice of Failure to Remedy.

1998
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	2
Department of Agriculture	17
Attorney General	3
Banking Board	1
Office of Banks and Real Estate	7
Capital Development Board	6
Department of Central Management Services	11
Department of Children and Family Services	13
Department of Commerce and Community Affairs	4
Illinois Commerce Commission	12
Comptroller	1
Department of Corrections	4
Criminal Justice Information Authority	1
State Board of Education	18
State Board of Elections	5
Department of Employment Security	1
Environmental Protection Agency	6
Farm Development Authority	1
Department of Financial Institutions	5
State Fire Marshal	6
Gaming Board	3
Governor	1
Governor's Travel Control Board	1
Health Facilities Planning Board	3
Higher Education Chief Procurement Officer	2
Board of Higher Education	1
Housing Development Authority	3
Department of Human Rights	1
Department of Human Services	106
Department of Insurance	23
Department of Labor	1
Lieutenant Governor	1
Liquor Control Commission	1
Law Enforcement Training and Standards Board	1

Lottery	2
Department of Natural Resources	60
Department of Nuclear Safety	12
Pollution Control Board	17
Department of Professional Regulation	26
Property Tax Appeal Board	1
Department of Public Aid	30
Department of Public Health	38
Illinois Racing Board	4
Department of Revenue	22
Secretary of State	16
State Employees Retirement System	2
Department of State Police	4
State Police Merit Board	1
Student Assistance Commission	15
Teacher's Retirement System	5
Department of Transportation	23
Treasurer	4

TOTAL	554
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1998
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	4
Department of Agriculture	16
Attorney General	3
Banking Board	1
Office of Banks and Real Estate	9
Capital Development Board	6
Department of Central Management Services	12
Department of Children and Family Services	12
Department of Commerce and Community Affairs	3
Illinois Commerce Commission	22
Comptroller	1
Community College Board	1
Department of Corrections	1
Criminal Justice Information Authority	1
State Board of Education	17
State Board of Elections	1
Department of Employment Security	1
Environmental Protection Agency	10
Department of Financial Institutions	5
State Fire Marshal	4
Gaming Board	4
Governor	1
Higher Education Chief Procurement Officer	2
Housing Development Authority	7
Department of Human Rights	2
Department of Human Services	57
Department of Insurance	25
Department of Labor	1
Law Enforcement Training and Safety Board	1
Lieutenant Governor	1
Lottery	2
Department of Natural Resources	51
Department of Nuclear Safety	11
Pollution Control Board	22

Department of Professional Regulation	27
Property Tax Appeal Board	1
Department of Public Aid	26
Department of Public Health	37
Illinois Racing Board	6
Department of Revenue	20
Secretary of State	15
State Employees Retirement System	1
Department of State Police	3
State Police Merit Board	2
Student Assistance Commission	15
Teacher's Retirement System	4
Department of Transportation	25
Treasurer	4
U of I	3

TOTAL	506
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1998
GENERAL RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Capital Development Board	1	0	0
Illinois Commerce Commission	0	2	0
Community College Board	1	0	0
Environmental Protection Agency	2	0	0
Department of Financial Institutions	0	1	0
Department of Labor	0	1	0
Lottery	0	1	0
Pollution Control Board	0	1	0
Department of Professional Regulation	1	0	0
Property Tax Appeal Board	0	1	0
Department of Revenue	0	1	0
Department of Transportation	0	1	0
TOTALS	5	9	0

1998
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	5	56%
Economic Impact on Affected Public	2	22%
Undue Hardship for the Affected Public	1	11%
Policy Not in Rule	1	11%
TOTAL	9	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
More Timely Rulemaking	1	20%
Further Rulemaking	3	60%
Change Rule for Compatibility with Statute	1	20%
TOTAL	5	100%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
TOTAL	0	0%

1998 EMERGENCY RULEMAKING

State Board of Education adopted an emergency rule creating procedures for accepting applications and issuing entitlements for debt service and/or school construction grants. JCAR issued 5 Objections:

- The rule created a restriction on the size of project that may receive funding that is more stringent than that intended by the General Assembly. SBE responded by eliminating the Section that created the project eligibility thresholds.
- SBE failed to consider the way in which classroom space is utilized, thereby creating a disadvantage for higher level schools that require special use space that is used intermittently. SBE responded by adding a new subsection creating utilization factors for elementary, middle and high schools to acknowledge the effect of special purpose rooms.
- The rule set forth procedures for ranking projects within a priority level, even if no such ranking is necessary because of sufficient funds. SBE responded that it will specify the ranking of projects within a statutory level if such ranking is warranted.
- SBE failed to give consideration to projects that would alleviate a shortage of classroom space due to population growth, as required by statute. SBE responded by adding new Sections that recognize projected enrollment in the SBE project ranking scheme. SBE further specified the manner in which projected enrollment can be determined and no cap was placed on the growth that can be considered.
- JCAR objected to the rule as a whole because it posed a threat to the public health, safety and welfare by not complying with the GA's intent that those school districts with the greatest need receive school construction grants in a timely manner. SBE's response was that it cited the above specific modifications it had made to the rule.

JCAR also issued a Recommendation that SBE accelerate its process for prioritizing projects for those applicants that met the 2/7/98 deadline, so that Capital Development Board can begin funding prior to the end of FY98. SBE responded that it would forward the priority list to CDB by early April for CDB's consideration at its May meeting.

SBE created procedures for accepting applications and issuing entitlements for debt service and/or school construction grants. JCAR objected because the rule failed to include the standards SBE will use to determine when a ranking is warranted. SBE responded by expressly stating that SBE will rank projects only when appropriations are insufficient to fund all acceptable projects.

SBE adopted an emergency rule that, in determining needed capacity, unit district schools will be divided into pre-K-8 and 9-12. JCAR recommended that, in the permanent rule, SBE consider classifying 9th grade as either elementary or secondary school based on in which type of facility that district places 9th grade classes. In the permanent rule, SBE followed the Recommendation.

In implementing the new Procurement Code, CDB created a \$30,000 threshold for requiring prior approval of

a change order and a finding that the change order is germane. At its August meeting, JCAR issued an Objection as the threshold was not in conformity with the Procurement Code. In response, CDB eliminated the threshold.

1998
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	1
Attorney General	1
Office of Banks and Real Estate	5
Capital Development Board	3
Department of Central Management Services	6
Department of Children and Family Services	1
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	6
Comptroller	1
Criminal Justice Information Authority	1
State Board of Education	8
State Board of Elections	1
Department of Financial Institutions	3
State Fire Marshal	1
Gaming Board	1
Governor	1
Higher Education Chief Procurement Officer	2
Department of Human Services	22
Lieutenant Governor	1
Lottery	1
Department of Natural Resources	4
Department of Nuclear Safety	6
Department of Professional Regulation	3
Department of Public Aid	13
Department of Public Health	1
Department of Revenue	4
Secretary of State	3
Student Assistance Commission	1
Teacher's Retirement System	3
Department of Transportation	1
Treasurer	1
U of I	4
TOTAL	111

1998
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	1
Attorney General	1
Office of Banks and Real Estate	5
Capital Development Board	3
Department of Central Management Services	6
Department of Children and Family Services	1
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	6
Comptroller	1
Criminal Justice Information Authority	1
State Board of Education	7
State Board of Elections	1
Department of Financial Institutions	3
Gaming Board	1
Governor	1
Higher Education Chief Procurement Officer	2
Department of Human Services	21
Department of Insurance	2
Lieutenant Governor	1
Lottery	1
Department of Natural Resources	3
Department of Nuclear Safety	3
Department of Professional Regulation	3
Department of Public Aid	12
Department of Public Health	1
Department of Revenue	4
Secretary of State	1
Student Assistance Commission	1
Teacher's Retirement System	4
Department of Transportation	1
Treasurer	1
U of I	4
TOTAL	104

1998
EMERGENCY RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Capital Development Board	0	1	0
State Board of Education	1	0	0
Lottery	0	1	0
Teachers Retirement System	0	1	0
TOTALS	1	3	0

1998
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	4	44%
Lacks Sufficient Justification/Rationale	1	11%
Undue Hardship for the Affected Public	1	11%
Lack of Sufficient Standards	1	11%
No Emergency Existed	1	11%
Resulting Regulatory Deficiency	1	11%
TOTAL	9	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Accellerate Agency Program	1	50%
Undue Hardship for the Affected Public	1	50%
TOTAL	2	100%

Basis for Suspension	Number of Suspensions	Percentage of Total
TOTAL	0	0%

1998

PEREMPTORY & EXEMPT RULEMAKING

In 1998, agencies used peremptory rulemaking procedures 15 times and Pollution Control Board used exempt rulemaking 22 times. The Department of Agriculture adopted 4 regulations that were identical to federal regulations and Central Management Services implemented 11 collective bargaining agreements. The IAPA allows regulations required by federal law/regulations, court orders and collective bargaining agreements to bypass the public and JCAR comment periods that are a part of regular rulemaking procedures because the agency has no discretion as to the substance of the rule.

Through the exempt rulemaking procedure that statutorily allows PCB to abbreviate the rulemaking process to adopt rules identical in substance to federal regulations that the State is required to adopt, PCB adopted 22 rulemakings in 1998. JCAR found only one of these uses of exempt rulemaking to be actionable.

On 10/30/95, USEPA stayed a portion of its used oil regulations in response to a court order for administrative reconsideration. That action required PCB to amend this Part to reflect the federal change. However, the federal action was reversed on 6/28/96, thus eliminating the need for identical in substance changes. PCB removed the identical in substance changes from its draft, leaving only a few technical changes, but continued to file the rulemaking as identical in substance well after it knew the identical in substance amendments were gone. JCAR objected at its February meeting because PCB should not have misused the identical in substance process. PCB agreed and stated that, in the future, it will not use this procedure for technical changes to a part unless identical in substance changes are also being made in that Part.

1998
PEREMPTORY & EXEMPT RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	4
Department of Central Management Services	11
Pollution Control Board	22
TOTAL	37

1998
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	3
Department of Central Management Services	13
Pollution Control Board	25
TOTAL	41

1998
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Pollution Control Board	0	1	0
TOTALS	0	1	0

1998
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
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Unwarranted Use of Identical in Substance Rulemaking	1	100%
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TOTAL	1	100%
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Basis for Recommendation	Number of Recommendations	Percentage of Total
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TOTAL	0	0%
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Basis for Suspension	Number of Suspensions	Percentage of Total
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TOTAL	0	0%
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1998
JCAR ASSESSMENT OF
APPROPRIATENESS OF AGENCY RESPONSE
TO JCAR ACTION

AGENCY	ASSESSMENT			
	APPROPRIATE	FAILURE TO REMEDY	JCAR WILL MONITOR	NO COMMENT
Capital Development Board	2			
Commerce Commission		2		
Community College Board	1			
State Board of Education	8			
Environmental Protection Agency	1		1	
Department of Financial Institutions	1			
Department of Labor				1
Lottery	1			1
Pollution Control Board	1			1
Department of Professional Regulation	1			
Property Tax Appeal Board	1			
Department of Revenue		1		
Teacher Retirement System	1			
Department of Transportation		1		
TOTAL	18	4	1	3

1999

GENERAL RULEMAKING

In 1999, JCAR reviewed 531 rulemakings, including 414 general rulemakings, 89 emergencies, 5 peremptories and 23 Pollution Control Board exempt rulemakings. JCAR voted 2 Prohibitions, 4 Objections and 7 Recommendations on general rulemakings, 5 Objections to emergency rulemakings, and 1 Objection to a peremptory rulemaking.

Department of Human Services proposed to modify the rules for issuing grants for mentally ill children. While school districts are required to provide general educational services, these individual care grants can be used to provide residential services or non-educational (in this instance, mental health) services in the community. The Interagency Agreement that originally outlined DHS and the schools' financial responsibilities had expired. JCAR recommended at the January meeting that DHS and State Board of Education either renew the former Interagency Agreement or enter into a new Agreement outlining each agency's financial responsibility for providing mental health services to school children. SBE and DHS acknowledged that an Agreement is necessary and negotiated that Agreement in February of 2000.

State Board of Elections proposed 2 rulemakings under which SBEL staff would examine nominating petitions of established parties and independent candidates to assure "apparent" conformity with the Election Code. Among the criteria for SBEL review were whether the petition included all required documents, information, statements, signatures, etc. At its February meeting, JCAR objected and issued a Filing Prohibition because SBEL was establishing by rule a process for review of nominating petitions when the Election Code clearly prescribes another process for that purpose. SBEL responded by withdrawing both rules.

Department of State Police initiated its first comprehensive review of its LEADS (Law Enforcement Agencies Data System) rules in a decade. JCAR recommended at its May meeting that DSP additionally promulgate administrative hearing rules, pursuant to Article 10 of the Illinois Administrative Procedure Act (IAPA), for the conduct of its appeal hearings related to Firearm Owners Identification (FOID) card denials, denial or revocation of LEADS certification, denial of LEADS access to a local authority, and any other contested case/appeals issues in which DSP may be involved. DSP agreed and adopted appropriate hearing rules on 4/21/00.

DHS proposed a rulemaking to prohibit developmental disabilities training providers and community mental health agencies from hiring a new employee until a background check is conducted through the Department of Public Aid Nurse Aide Registry. The proposal additionally stated that DD providers shall not employ the person if substantiated findings of abuse or neglect are listed on the Registry. JCAR recommended at the July meeting that, because the statutory authority DHS relied on is silent on the issue of whether an administrative determination of abuse or neglect that is noted in the Nurse Aide Registry bans or limits employment, DHS seek a statutory amendment clearly stating that being placed on the Registry is a ban to employment in State or community agency DD facilities. DHS responded by asserting its belief that the Social Security Act provides sufficient authority to enable it to enact the employment ban, citing a very broad federal statute that requires "safeguarding the health and welfare of individuals provided services". However DHS agreed that the banning of a person from employment is a serious sanction to impose and stated that it would attempt to secure statutory authority. SB 1504 passed during the 2001 session.

DHS proposed rules to implement a statewide electronic finger imaging (EFI) system for use in the TANF and

Food Stamp programs. JCAR recommended at the July meeting that DHS not adopt this rulemaking until statutory authorization for the statewide expansion of the program has been fully enacted. DHS plans to propose legislation for the 2002 session.

Illinois Housing Development Authority proposed a rulemaking revising procedures for reserving tax credits dependent on the availability of funds, reducing the application and review criteria detailed in rules, implementing a competitive scoring process (set out in the allocation plan, not in rules) and eliminating specific fees from rule (to be set out in the allocation plan). At its October meeting, JCAR objected to IHDA eliminating information from the rules that is necessary to describe IHDA's policy for allocating housing tax credits and instead placing that material in its State Allocation Plan, a document maintained outside of rules. IHDA withdrew the rulemaking.

State Universities Retirement System proposed a rule creating an exception to a statutory bar against pay increases for university employees in excess of 20% in the last (or highest paid) 4 years of employment. JCAR recommended that if SURS believes that increased salary because of a change in position should be exempted from the cap described in the Pension Code, the System should seek an amendment to the statute to authorize the exception. SURS agreed with the Recommendation, stating it plans to seek a legislative remedy during the 2002 session.

1999
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	18
Attorney General	2
Auditor General	3
Office of Banks and Real Estate	6
Capital Development Board	2
Carnival and Amusement Safety Board	1
Department of Central Management Services	16
Department of Children and Family Services	8
Department of Commerce and Community Affairs	5
Illinois Commerce Commission	6
Community College Board	3
Comptroller	1
Department of Corrections	1
Division of Specialized Care for Children	1
State Board of Education	14
Educational Facilities Authority	1
State Board of Elections	6
Department of Employment Security	1
Environmental Protection Agency	5
Farm Development Authority	1
Department of Financial Institutions	2
Gaming Board	2
Governor	1
Health Facilities Planning Board	7
Board of Higher Education	4
Housing Development Authority	2
Department of Human Rights	1
Department of Human Services	69
Department of Insurance	9
Department of Labor	2
Lieutenant Governor	1
Liquor Control Commission	3
Department of Natural Resources	40

Department of Nuclear Safety	8
Pollution Control Board	8
Procurement Policy Board	3
Department of Professional Regulation	28
Property Tax Appeal Board	1
Department of Public Aid	19
Department of Public Health	18
Illinois Racing Board	4
Department of Revenue	11
Secretary of State	10
State Employees Retirement System	1
State Police Merit Board	1
State Universities Retirement System	2
Student Assistance Commission	8
Teacher's Retirement System	1
Department of Transportation	17
Toll Highway Authority	1

TOTAL	386
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1999
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	17
Attorney General	2
Office of Banks and Real Estate	4
Capital Development Board	2
Carnival and Amusement Safety Board	1
Department of Central Management Services	14
Department of Children and Family Services	9
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	4
Community College Board	1
Department of Corrections	2
Division of Specialized Care for Children	1
State Board of Education	9
Educational Facilities Authority	1
State Board of Elections	7
Department of Employment Security	1
Environmental Protection Agency	4
Farm Development Authority	2
Department of Financial Institutions	2
State Fire Marshal	2
Gaming Board	2
Governor	1
Health Facilities Planning Board	4
Board of Higher Education	4
Housing Development Authority	3
Department of Human Rights	1
Department of Human Services	103
Department of Insurance	9
Department of Labor	1
Lieutenant Governor	1
Liquor Control Commission	2
Department of Natural Resources	32
Department of Nuclear Safety	11

Pollution Control Board	8
Procurement Policy Board	3
Department of Professional Regulation	28
Property Tax Appeal Board	1
Department of Public Aid	22
Department of Public Health	25
Illinois Racing Board	4
Department of Revenue	10
Secretary of State	12
State Employees Retirement System	2
Department of State Police	2
State Police Merit Board	1
State Universities Retirement System	1
Student Assistance Commission	8
Teacher's Retirement System	2
Department of Transportation	24

TOTAL	414
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1999
GENERAL RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
State Board of Elections	0	2	2
Housing Development Authority	0	1	0
Department of Human Services	4	0	0
Department of Public Aid	1	0	0
Department of Public Health	0	1	0
Department of State Police	1	0	0
State Universities Retirement System	1	0	0
TOTALS	7	4	2

1999
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	2	50%
Economic Impact on Affected Public	1	25%
Policy Not in Rule	1	25%
TOTAL	4	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
More Timely Rulemaking	1	14%
Further Rulemaking	1	14%
Renew Interagency Agreement	1	14%
Statutory Authority	4	57%
TOTAL	7	100%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
Statutory Authority	2	100%
TOTAL	2	100%

1999

EMERGENCY RULEMAKING

DHS adopted an emergency rule on the Subacute Alcoholism and Substance Abuse Treatment Services program that replaced a statement of the types of information required to be collected under DARTS (Department Automated Reporting and Tracking System) with a general statement requiring the provider to submit billings using DARTS or another DHS approved system. JCAR objected at the August meeting to DHS removing from the rule the specific information to be collected through DARTS, as well as accompanying confidentiality provisions. DHS responded by reinstating the language in both the emergency and permanent rules.

1999
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Office of Banks and Real Estate	1
Capital Development Board	2
Department of Central Management Services	6
Department of Children and Family Services	1
Department of Commerce and Community Affairs	2
State Board of Education	1
Educational Facilities Authority	1
State Board of Elections	2
Farm Development Authority	1
Department of Financial Institutions	1
Gaming Board	1
Health Facilities Planning Board	1
Board of Higher Education	2
Department of Human Services	29
Department of Insurance	1
Liquor Control Commission	1
Department of Natural Resources	5
Department of Public Aid	10
Department of Public Health	3
Illinois Racing Board	3
Department of Revenue	5
Secretary of State	3
TOTAL	82

1999
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Office of Banks and Real Estate	1
Capital Development Board	2
Department of Central Management Services	6
Department of Children and Family Services	1
Department of Commerce and Community Affairs	2
State Board of Education	1
Educational Facilities Authority	1
State Board of Elections	2
Farm Development Authority	1
Department of Financial Institutions	1
State Fire Marshal	1
Gaming Board	1
Health Facilities Planning Board	1
Board of Higher Education	2
Department of Human Services	30
Department of Insurance	1
Liquor Control Commission	1
Department of Natural Resources	5
Department of Nuclear Safety	3
Department of Public Aid	11
Department of Public Health	3
Illinois Racing Board	3
Department of Revenue	4
Secretary of State	5
TOTAL	89

1999
EMERGENCY RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Farm Development Authority	0	1	0
Department of Human Services	0	4	0
TOTALS	0	5	0

1999
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	1	20%
No Emergency Existed	3	60%
Policy Not in Rules	1	20%
TOTAL	5	100%

Basis for Recommendation	Number of Recommendation:	Percentage of Total
TOTAL	0	0%

Basis for Suspension	Number of Suspensions	Percentage of Total
TOTAL	0	0%

1999

PEREMPTORY & EXEMPT RULEMAKING

CMS repealed by peremptory rulemaking the pay scale for DOL's Elevator Operators at 401 S. State in Chicago. JCAR objected at its November meeting to CMS' use of peremptory rulemaking in this situation. The rulemaking does not reflect a collective bargaining agreement, court order or federal regulation, nor was it adopted within the 30 days window during which peremptory rulemaking can be used. CMS agreed to use peremptory rulemaking procedures properly in the future.

1999
PEREMPTORY & EXEMPT RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	2
Department of Central Management Services	3
Pollution Control Board	19
TOTAL	24

1999
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	2
Department of Central Management Services	3
Pollution Control Board	23
TOTAL	28

1999
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Central Management Services	0	1	0
TOTALS	0	1	0

1999
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
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Unwarranted Use of Peremptory Rulemaking	1	100%
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TOTAL	1	100%
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Basis for Recommendation	Number of Recommendations	Percentage of Total
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TOTAL	0	0%
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Basis for Suspension	Number of Suspensions	Percentage of Total
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TOTAL	0	0%
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1999
JCAR ASSESSMENT OF
APPROPRIATENESS OF AGENCY RESPONSE
TO JCAR ACTION

AGENCY	ASSESSMENT			
	APPROPRIATE	FAILURE TO REMEDY	JCAR WILL MONITOR	NO COMMENT
Department of Central Management Services	1			
Farm Development Authority	1			
State Board of Elections	2			
Housing Development Authority	1			
Department of Human Services	7		1	
Department of Public Aid	1			
Department of Public Health	1			
Department of State Police			1	
State Universities Retirement System	1			
TOTAL	15	0	2	0

2000

GENERAL RULEMAKING

In 2000, the Joint Committee reviewed 637 rulemakings, including 514 general rulemakings, 93 emergencies, 11 peremptories and 19 Pollution Control Board exempt rulemakings. JCAR voted 2 Filing Prohibitions, 17 Objections and 13 Recommendations on general rulemakings and 1 Suspension, 5 Objections and 1 Recommendation on emergency rulemakings.

Illinois Commerce Commission proposed implementing Enhanced 9-1-1 requirements for private businesses, corporations and industries (statutory) and schools, governmental units and not for profits (rule only). JCAR objected and prohibited the filing of this rule at its April meeting because the Commission exceeded its statutory authority by extending the Emergency Telephone Systems Act to schools, governments and not for profits. Additionally, the rule would be an undue economic and regulatory burden on the business entities it rightfully encompassed by holding them to all of 13 separate requirements to operate a personal emergency answering point, rather than only those standards most relevant to the particular size and type of facility and the minimum standards necessary to ensure the safety of the persons involved. ICC responded at the June meeting by eliminating references to schools, governments and not for profits (reintroducing these elements in a separate emergency rule) and modified the rule to make it less onerous to business. JCAR withdrew the filing prohibition.

The Children and Family Services Act requires that rules be adopted that carry out the functions, purposes and duties of Department of Children and Family Services Office of Inspector General (OIG). While a couple of rules make reference to the OIG and some of its authorities, no totally encompassing rules have been adopted. At its April meeting, JCAR recommended that the DCFS Inspector General adopt the rules required by the Act. DCFS proposed permanent rules governing OIG operations on 6/1/01.

Department of Professional Regulation proposed a rulemaking requiring all pharmacy licensees to keep records of dispensing errors and all pharmacies to maintain dispensing error records for 2 years. The rule stated that DPR would not disclose dispensing error records under subpoena or discovery motion in civil or criminal proceedings. JCAR objected because no statute authorizes DPR to protect the confidentiality of dispensing error records against court action. In response, DPR eliminated the Section regarding dispensing error reporting.

DCFS proposed a rulemaking implementing the Children's Product Safety Act. At its July meeting, JCAR recommended that Department of Public Health also propose rules governing the creation, maintenance and update of the unsafe children's product list DCFS was relying on in its rulemaking. DPH plans to propose permanent rulemaking no later than December 2001.

Department of Human Services proposed to require all license-exempt child care providers seeking a State subsidy from the Child Care Assistance Program for TANF recipients and other low income families to agree in writing to a nonfingerprint based Child Abuse and Neglect Tracking System (CANTS) check. JCAR objected at the August meeting to 3 provisions not specifically authorized by statute: that family members of license-exempt child care providers (age 13+) agree to a CANTS background check even if they will not have direct contact with the child; that the CANTS check be repeated every 2 years; and that DHS is automatically denying payments when there is a CANTS finding, with no opportunity to seek a waiver or other form of due process (which would be more severe than actions taken against licensed providers). DHS adopted the rulemaking with no modifications, prompting JCAR to issue an additional Objection to the adopted rule. DHS responded by

again refusing to make any modifications, but plans to seek specific statutory authority in the 2002 legislative session to clarify its policies as a result of JCAR's concerns.

DCFS created a Direct Child Welfare Services Employee License Board authorized to suspend, revoke or refuse to reinstate a license. JCAR objected at its September meeting because statute makes these licensure actions DCFS responsibilities, not the Board's. DCFS modified the rule to make the Board advisory to the Director until it can get a statutory amendment strengthening the Board's authorities. Legislation doing this passed during the 2001 session.

On a Department of Commerce and Community Affairs rulemaking authorizing grants (previously only loans) to for-profit businesses and loans (previously only grants) to counties, municipalities and local promotion groups for development or improvement of tourism attractions, JCAR recommended that DCCA codify into the rules for each of its grant programs its policy requiring an audit of all grants exceeding \$300,000. DCCA did so.

State Board of Elections proposed 2 rulemakings requiring a nominating petition to include the printed name of each signer and to provide a space next to each signature in which the name of each signer may be printed. Failure to provide the printed name shall not alone render the signer's name invalid, but SBEL may declare the signature invalid without further inquiry into the grounds for invalidity if the signature is illegible. At its September meeting, JCAR objected, stating that the required contents of nominating petitions should be statutorily determined. SBEL withdrew both rulemakings.

A DHS rulemaking on the use of Medicaid funds for community mental health services required DHS, DCFS and Department of Corrections representatives that have evidence of Medicaid fraud to refer that evidence to Department of Public Aid's Office of Inspector General (OIG) for further action. At the October meeting, JCAR recommended that DPA codify into rules the procedures used by its OIG to investigate Medicaid fraud, including, but not limited to, timeframes for investigations, investigative process and procedure, appeal procedures, contact information for providing evidence of Medicaid fraud, etc. DPA responded by agreeing to review its existing rules concerning the DPA-OIG and to adopt further rules as necessary. JCAR has received a rough draft of this further rulemaking.

The Gaming Board proposed to allow alcoholic beverages to be sold on riverboats generally from 9:30 to 4:30 a.m. At its October meeting, JCAR objected because IGB had increased the hours of authorized alcohol sale during 1st Notice (therefore, without notice to the public) to such an extent that the public welfare and safety could be endangered. IGB's original proposal would have set the hours of sale at 10-2 a.m. (shorter on Sun.). These hours had reportedly been reached as a compromise after IGB staff originally proposed unlimited hours, which was met with strong opposition from some parties. During 1st Notice, in response to comment from the riverboats, the Board increased the hours to 9:30-4 a.m. 7 days a week. In addition to opposing the longer hours, the groups who considered themselves party to the "compromise" were upset that they were not informed IGB was going to change to the longer hours when it presented 2nd Notice to JCAR. IGB refused to modify or withdraw the rulemaking and JCAR issued a Failure to Remedy.

Department of Revenue proposed a rulemaking expanding the Circuit Breaker Pharmaceutical Assistance Program to certain medications designed to treat cancer, Alzheimer's, Parkinson's, glaucoma, and lung disease and smoking related illnesses. JCAR objected because the proposal did not reflect the General Assembly's intent that drugs prescribed to treat side effects and related illnesses be encompassed and because DOR added a limiting factor not enacted by the GA providing that the program affects drugs prescribed for the treatment of chronic illness, but not acute illness. DOR persisted in its argument that it did not have statutory to cover drugs for the treatment of side effects and related illnesses and JCAR issued a Failure to Remedy.

Illinois Community College Board revised its rules governing ICCB grants, replacing grant specific audit requirements with guidelines covering all restricted or special initiative grants. JCAR recommended at its November meeting that ICCB review and revise its rules within the next 6 months to accurately and fully describe in rule its practices, procedures and grant requirements. Thus far, no additional rulemaking has been proposed.

Department of Financial Institutions proposed a rulemaking regulating short-term loans, i.e., payday and (car) title loans. At its November meeting, the Committee objected, stating that, while the rulemaking includes many provisions that will meet the statutory requirement that these rules protect consumers, public commentators have argued that some of those provisions will pose an unreasonable economic burden on small lenders. DFI stated at the 11/14/00 JCAR meeting that it would withdraw the rule, re-propose it, and then address the outstanding issues. Its formal response, however, dated 11/22/00, stated that it would not modify or withdraw the rule because it had adequately considered alternatives. Because DFI reneged on its verbal agreement, JCAR convened a special meeting on 11/29/00 at which it voted a Filing Prohibition. The Prohibition expired on 5/29/01 and DFI filed the rules with the Secretary of State with an 8/1/01 effective date. The pay day loan industry filed suit in the Cook County Circuit Court. While the initial suit was dismissed on 7/31/01, the appellate court stayed enforcement of the rules pending appeal. On 8/20/01, the Supreme Court lifted the stay and DFI began enforcement of the rules.

DHS proposed a rulemaking to provide Crisis Assistance payments to TANF recipients in instances of homelessness or threatened homelessness due to natural disasters, court orders to vacate premises, or domestic abuse, or when food needs cannot be met through the Food Stamp program. JCAR objected at the December meeting because DHS is limiting crisis assistance to TANF eligible clients, which is in contravention of Sec. 4-12 of the Public Aid Code that requires DHS to determine eligibility for families already receiving TANF grants as well as determine eligibility for all other families. DHS disagreed with JCAR's interpretation of Sec. 4-12 and adopted the rule. JCAR issued a Failure to Remedy.

2000
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	2
Department of Agriculture	7
Attorney General	3
Office of Banks and Real Estate	11
Building Commission	3
Capital Development Board	4
Department of Central Management Services	19
Department of Children and Family Services	22
Department of Commerce and Community Affairs	8
Illinois Commerce Commission	15
Community College Board	1
Comptroller	3
Court of Claims	1
Criminal Justice Informantion Authority	1
Division of Specialized Care for Children	1
Dry Cleaners Emergency Response Trust Fund	2
State Board of Education	4
State Board of Elections	1
Department of Employment Security	4
Environmental Protection Agency	7
Farm Development Authority	2
Department of Financial Institutions	4
State Fire Marshal	3
Gaming Board	1
Governor's Ethics Commission	1
Guardianship and Advocacy Commission	6
Health Care Cost Containment Council	5
Health Facilities Planning Board	14
Historic Preservation Agency	1
Housing Development Authority	1
Department of Human Rights	1
Department of Human Services	46
Department of Insurance	18
Department of Labor	12

Legislative Information System	2
Lottery	1
Department of Natural Resources	25
Northeastern Illinois Planning Commision	1
Department of Nuclear Safety	5
Pollution Control Board	30
Department of Professional Regulation	22
Department of Public Aid	23
Department of Public Health	41
Illinois Racing Board	17
Department of Revenue	77
Secretary of State	14
State Employees Retirement System	2
Department of State Police	4
State Police Merit Board	1
Student Assistance Commission	15
Teacher's Retirement System	2
Department of Transportation	19
Treasurer	3
Toll Highway Authority	2
U of I	1
Department of Veterans Affairs	12

TOTAL	553
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2000
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	9
Attorney General	2
Auditor General	3
Office of Banks and Real Estate	9
Building Commission	3
Capital Development Board	4
Department of Central Management Services	15
Department of Children and Family Services	19
Department of Commerce and Community Affairs	10
Illinois Commerce Commission	14
Community College Board	1
Comptroller	3
Division of Specialized Care for Children	1
Court of Claims	1
Criminal Justice Information Authority	1
Dry Cleaners Emergency Response Trust Fund	2
State Board of Education	10
State Board of Elections	4
Department of Employment Security	2
Environmental Protection Agency	9
Farm Development Authority	1
Department of Financial Institutions	1
State Fire Marshal	2
Gaming Board	1
Governor's Ethics Commission	1
Guardianship and Advocacy Commission	5
Health Facilities Planning Board	10
Board of Higher Education	1
Department of Human Services	55
Department of Insurance	16
Department of Labor	12
Liquor Control Commission	2
Lottery	1
Department of Natural Resources	39

Northeastern Illinois Planning Commission	1
Department of Nuclear Safety	5
Pollution Control Board	23
Department of Professional Regulation	20
Department of Public Aid	21
Department of Public Health	36
Illinois Racing Board	17
Department of Revenue	59
Secretary of State	12
State Employees Retirement System	2
Department of State Police	3
Student Assistance Commission	15
Teacher's Retirement System	2
Toll Highway Authority	3
Department of Transportation	16
Treasurer	3
U of I	1
Department of Veterans Affairs	6

TOTAL	514
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2000
GENERAL RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Department of Commerce and Community Affairs	3	0	0
Department of Children and Family Services	2	1	0
Illinois Commerce Commission	0	1	1
Community College Board	1	0	0
State Board of Elections	0	2	0
Department of Financial Institutions	0	1	1
Gaming Board	0	1	0
Department of Human Services	1	3	0
Department of Insurance	1	0	0
Liquor Control Commission	0	1	0
Department of Natural Resources	0	2	0
Pollution Control Board	0	1	0
Department of Professional Regulation	0	1	0
Department of Public Aid	1	0	0
Department of Public Health	0	1	0
Department of Revenue	3	1	0
Department of Transportation	1	1	0
TOTALS	13	17	2

2000
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	11	61%
Economic Impact on Affected Public	2	11%
Procedural	1	6%
Unduly Burdensome Regulation	2	11%
Resulting Regulatory Deficiency	1	6%
Endangerment to Public Welfare/Safety	1	6%
TOTAL	18	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
More Timely Rulemaking	2	15%
Further Rulemaking	3	23%
Statutory Authority	3	23%
Policy Not in Rules	3	23%
Insufficient Economic/Budgetary Information	1	8%
Submit Rulemaking to Procurement Policy Board	1	8%
TOTAL	13	100%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
Statutory Authority	3	75%
Undue Economic Impact on Affected Public	1	25%
TOTAL	4	100%

2000

EMERGENCY RULEMAKING

Illinois Commerce Commission adopted an emergency rule implementing Enhanced 9-1-1 requirements for schools, governmental units and not for profits. JCAR objected to and suspended the rule because ICC exceeded its statutory authority under the Emergency Telephone Systems Act by extending the Act's application to entities not expressly encompassed by the legislation. ICC refused to modify or withdraw the rulemaking, arguing that while the statute does not specifically reference these entities, it also contains no expressed exemption for them. JCAR caused the filing of joint resolutions to continue the Suspension; SJR 77 passed the Senate but was not called in the House.

State Board of Elections adopted an emergency rule prescribing a revised penalty formula for noncompliance with the State Gift Ban Act. At its September meeting, JCAR objected to the emergency rulemaking because, as the State Gift Ban Act had been ruled unconstitutional by the Will County Circuit Court and the issue was under appeal, the rule had questionable statutory authority. The Objection would permit SBEL to modify/withdraw the rulemaking pending resolution of the litigation in the Supreme Court. SBEL modified the rule to state that it will not be operative, and its penalty provisions will not be applied against any political committee, so long as the underlying statute is held to be unconstitutional and unenforceable.

The Comptroller's Office adopted an emergency rule subjecting pension benefits to the 25% offset limitation created by Sec. 10.05 of the State Comptroller's Act. The rule, however, conflicted with both the Pension Code and Code of Civil Procedure, which specifically protect pensions from any attachment, garnishment, etc. At its December meeting, JCAR recommended that the Comptroller seek legislation to resolve conflict among the Comptroller's Act, Pension Code and Code of Civil Procedure as to the extent to which debt owed by an annuitant can be offset against State pension benefits. The Comptroller agreed, but was unable to accomplish this during the 2001 session. The Comptroller's Office caused such an amendment to be introduced, but it died in committee. The Comptroller's Office did not follow the emergency rule with a permanent rulemaking and indicates its intention to continue to allow entire pension benefits to be offset.

2000
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	3
Office of Banks and Real Estate	10
Department of Central Management Services	4
Department of Children and Family Services	5
Department of Commerce and Community Affairs	4
Illinois Commerce Commission	8
Comptroller	1
Criminal Justice Informantion Authority	1
Division of Specialized Care for Children	1
Dry Cleaners Emergency Response Trust Fund	2
State Board of Education	2
State Board of Elections	1
Department of Employment Security	1
Housing Development Authority	1
Department of Human Services	16
Department of Insurance	3
Department of Labor	1
Department of Natural Resources	1
Department of Professional Regulation	2
Department of Public Aid	6
Department of Public Health	2
Department of Revenue	6
Secretary of State	7
State Police Merit Board	1
Department of Transportation	5
Treasurer	3
Toll Highway Authority	2
U of I	1
TOTAL	100

2000
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	2
Office of Banks and Real Estate	6
Department of Central Management Services	4
Department of Children and Family Services	5
Department of Commerce and Community Affairs	3
Illinois Commerce Commission	8
Comptroller	1
Division of Specialized Care for Children	1
Criminal Justice Information Authority	1
Dry Cleaners Emergency Response Trust Fund	2
State Board of Education	2
State Board of Elections	1
Department of Employment Security	1
Housing Development Authority	1
Department of Human Services	16
Department of Insurance	3
Department of Natural Resources	2
Department of Professional Regulation	2
Department of Public Aid	5
Department of Public Health	2
Department of Revenue	7
Secretary of State	7
State Police Merit Board	1
Toll Highway Authority	1
Department of Transportation	5
Treasurer	3
U of I	1
TOTAL	93

2000
EMERGENCY RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Office of Banks and Real Estate	0	1	0
Illinois Commerce Commission	0	1	1
Comptroller	1	0	0
State Board of Elections	0	1	0
Department of Human Services	0	1	0
Department of Insurance	0	1	0
TOTALS	1	5	1

2000
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	3	50%
No Emergency Existed	1	17%
Resulting Regulatory Deficiency	1	17%
Policy Not in Rules	1	17%
TOTAL	6	100%

Basis for Recommendation	Number of Recommendation:	Percentage of Total
Statutory Authority	1	100%
TOTAL	1	100%

Basis for Suspension	Number of Suspensions	Percentage of Total
Statutory Authority	1	100%
TOTAL	1	100%

2000

PEREMPTORY & EXEMPT RULEMAKING

Using peremptory rulemaking procedures, State Board of Education repealed a rule limiting special education teachers with certificates endorsed for specific disabilities to teaching only students with those disabilities. At its November meeting, JCAR objected to the peremptory rule because it could present a threat to the interest, safety and welfare of special education students. SBE refused to modify or withdraw the peremptory rule because it was ordered by a federal judge in connection with the special education case commonly known as *Corey H.* SBE further stated that it had no discretion as to the content of the rule and was ordered to file the peremptory rulemaking no later than 10/22/00. In response to SBE's refusal to withdraw the peremptory rule, JCAR issued a Suspension of the rule at its 2/01 meeting because implementation of the rule may result in teachers being assigned to students for whose disabilities the teacher has no training or preparation.

SBE adopted a second peremptory rule that creates 2 categories of special education teachers (Learning Behavior Specialists I and II) and special education teacher preparation standards. At its 1/9/01 meeting, JCAR objected to and suspended the rule because it could present a threat to the public interest, safety and welfare, particularly the welfare of the State's special education students. SBE refused to modify or repeal the rule.

On 3/20/01 JCAR voted to file a joint resolution of the House and Senate of the General Assembly continuing both suspensions. SJR 26 passed the Senate on 5/21/01 with a vote of 56-0-0 and passed the House on 5/31/01 with a vote of 117-0-0. Section 5-125 of the IAPA states that if a joint resolution passes both houses of the General Assembly within 180 days after the JCAR action to suspend the rule, the rulemaking will be considered repealed and the Secretary of State must immediately remove the rule from the collection of the effective rules. This is the first time the General Assembly has, by joint resolution, continued a JCAR Suspension or Filing Prohibition.

2000
PEREMPTORY & EXEMPT RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	5
Department of Central Management Services	6
State Board of Education	2
Pollution Control Board	24
TOTAL	37

2000
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	5
Department of Central Management Services	5
State Board of Education	1
Pollution Control Board	19
TOTAL	30

2000
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
State Board of Education	0	1	0
Pollution Control Board	0	1	0
TOTALS	0	2	0

2000
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Procedural	1	50%
Public Interest, Safety & Welfare	1	50%
TOTAL	2	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
TOTAL	0	0%

Basis for Suspension	Number of Suspensions	Percentage of Total
	0	0%
TOTAL	0	0%

2000
JCAR ASSESSMENT OF
APPROPRIATENESS OF AGENCY RESPONSE
TO JCAR ACTION

	ASSESSMENT			
	APPROPRIATE	FAILURE TO REMEDY	JCAR WILL MONITOR	NO COMMENT
AGENCY				
Office of Banks and Real Estate	1			
Department of Children and Family Services	3			
Illinois Commerce Commission	1	1	2	
Department of Commerce and Community Affairs	2		1	
Community College Board	1			
Comptroller	1			
State Board of Education		1		
State Board of Elections	3			
Department of Financial Institutions		1		
Gaming Board		1		
Department of Human Services	2	1		
Department of Insurance	2			
Liquor Control Commission	1			
Department of Natural Resources	2			
Pollution Control Board	1	1		
Department of Professional Regulation	1			
Department of Public Health	1			
Department of Revenue	3	1		
Department of Transportation	2			
TOTAL	27	7	3	0

2001

GENERAL RULEMAKING

In 2001, JCAR reviewed 533 rulemakings, 438 of which were general rulemakings, 68 were emergency rulemakings, 7 were peremptory rulemakings and 20 were Pollution Control Board exempt rulemakings. JCAR voted 1 Filing Prohibition, 6 Objections and 13 Recommendations on general rulemakings; 9 Objections on emergency rulemakings; 2 Suspensions, 1 Objection and 3 Recommendations on peremptory/exempt rulemakings; and 1 Objection to an existing rule. During JCAR review, agencies agreed to substantive/technical modifications on 214 of the 438 proposed rulemakings.

In 2000, ICC proposed implementing Enhanced 9-1-1 requirements for schools, governmental units and not for profits, as well as for business and industry. Because statute gives ICC the authority to apply this requirement to business/industry, but makes no mention of schools, not for profits and governments, JCAR prohibited filing. In response, ICC divided the issue into 2 separate rulemakings. JCAR issued no Objection to the one affecting business/industry, but again objected and prohibited the filing of the rule affecting schools, etc., at its 4/01 meeting. ICC refused to modify or withdraw the rulemaking, noting that there is no specific statutory exemption for schools, governmental units and not for profits. On 7/7/01, the Filing Prohibition expired. ICC continues to be of the opinion that these entities are encompassed within the Emergency Telephone Act's reference to business and industry. JCAR caused the filing of a joint resolution continuing the Filing Prohibition that remained in House Rules Committee.

Illinois Racing Board proposed a rulemaking consolidating and updating policies concerning racing violations; fines, suspensions and expulsion; protests and appeals; and stewards. The rulemaking repealed rules that set various harness racing fines for violations of the Act/rules, resulting in policy outside rule and possible inequitable application of the law. JCAR recommended that IRB reinstate specific fines in future rulemaking and specify in rules penalties that apply to thoroughbred racing as well. IRB agreed.

On 9/22/00, ICC proposed new rules (Non-Discrimination in Affiliate Transactions for Gas Utilities) prohibiting gas utilities from giving affiliated interests or their customers preferential treatment over unaffiliated entities or their customers, but permitting affiliates to use the utility's logo or corporate name. The rule was modified to ban joint marketing/advertising only with respect to utilities and affiliates in competition with alternative retail gas suppliers and to permit use of the corporate name/logo only with the addition of a disclaimer. The rule was scheduled for consideration at JCAR's 9/11/01 meeting that was cancelled due to the emergency closing of all State buildings. Because the rule was due to expire 9/22/01, ICC adopted it on 9/21/01. An intervenor in the docket, the Northern Illinois Chapter of Air Conditioning Contractors of America (NIACCA), filed an application for rehearing of the ICC Order adopting the rule, which ICC denied. At the October meeting, JCAR voted to open an investigation into the existing rule; that staff schedule a meeting of JCAR members, ICC and other interested parties; and that the issue be placed on a future agenda for consideration. JCAR recommended, at its December meeting, that ICC seek specific statutory authority to promulgate rules governing the relationship between gas utilities and combination gas/electric utilities and their affiliates and ensuring nondiscrimination in services provided to those affiliates. Such statutory authority exists for electric utilities, but not gas. The General Assembly could provide guidance on some of the disputed aspects of the rule through such authorizing statute.

DPR proposed rules establishing licensure procedures for advanced practice nurses (APN) and establishing policies for prescriptive authority and the delivery of anesthesia. JCAR objected to language added during 1st

Notice setting forth strenuous training and experience requirements for physicians who employ CRNAs (Certified Registered Nurse Anesthetists) for office-based procedures. Prior to these additions, no anesthesia training beyond that provided in general physician education was required. While DPR hinged its policy change on public comment submitted by the Medical Society, the altered policy was a major restriction on the practice of CRNAs and a limitation on the office practice of a physician (which is generally not regulated in Illinois). JCAR objected because this major policy modification should have been introduced as a new rulemaking to allow complete public disclosure and opportunity for comment, rather than as a modification midway through the process. When DPR proceeded to adopt text that was never fully disclosed for public comment, the Committee voted to publish a Notice of Failure to Remedy.

DHS rulemaking establishing standards for partner abuse intervention programs (PAIPs) received 2 JCAR Recommendations. JCAR recommended that DHS seek specific statutory authority allowing GRF to be used as an alternative funding source for PAIP grants. Two statutes state that DHS is to award grants from the Domestic Violence Abuser Services Fund (DVASF). Due to a lack of adequate funds in DVASF, DHS was utilizing GRF funds from the Domestic Violence Shelters line, relying on statute stating that DHS shall fund domestic violence shelters and “service programs” in part from the Domestic Violence Shelter and Service Fund and in part from the GRF. However, the General Assembly specifically set up the DVASF to pay PAIP grants. The second Recommendation was that DHS seek statutory authority to compile and maintain a list of approved PAIPs for use by the courts when sentencing domestic violence abusers. Maintenance of this list is part of the rule but has no underlying statutory authority. DHS argued it had statutory authority to compile and maintain a list of approved PAIPs for use by the court under the Domestic Violence Act, but could point to no specific language. Additionally, DHS argued that the courts have asked to be apprised of the approved programs and any entity may obtain this information under FOIA. However, DHS has not classified these requests as FOIA requests and the rules do not reflect that the courts must submit a FOIA request to receive updated PAIP information, as required by DHS FOIA request rules. JCAR issued a Notice of Failure to Remedy.

2001

GENERAL RULEMAKINGS PROPOSED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	13
Attorney General's Ethics Commission	1
Office of Banks and Real Estate	3
Capital Development Board	8
Carnival and Amusement Safety Board	1
Department of Central Management Services	18
Department of Children and Family Services	13
Department of Commerce and Community Affairs	7
Illinois Commerce Commission	16
Community College Board	1
Comptroller	3
Department of Corrections	2
Criminal Justice Informantion Authority	4
State Board of Education	22
Educational Facilities Authority	1
Educational Labor Relations Board	1
Emergency Management Agency	4
Department of Employment Security	2
Environmental Protection Agency	8
Farm Development Authority	1
Department of Financial Institutions	1
State Fire Marshal	3
Gaming Board	2
Health Facilities Planning Board	3
Housing Development Authority	3
Department of Human Rights	1
Department of Human Services	39
Department of Insurance	15
Department of Labor	3
Liquor Control Commission	2
Lottery	1
Department of Natural Resources	52
Department of Nuclear Safety	6

Pollution Control Board	12
Procurement Policy Board	2
Department of Professional Regulation	10
Department of Public Aid	30
Department of Public Health	30
Illinois Racing Board	20
Department of Revenue	51
Secretary of State	13
State Employees Retirement System	1
Department of State Police	5
State Police Merit Board	1
State Universities Retirement System	1
Student Assistance Commission	10
Teacher's Retirement System	1
Department of Transportation	16
Treasurer	2
Department of Veterans Affairs	1

TOTAL	467
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2001
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	2
Department of Agriculture	8
Attorney General	1
Office of Banks and Real Estate	6
Capital Development Board	4
Carnival and Amusement Safety Board	1
Department of Central Management Services	19
Department of Children and Family Services	10
Department of Commerce and Community Affairs	9
Illinois Commerce Commission	15
Community College Board	2
Comptroller	3
Department of Corrections	2
Criminal Justice Information Authority	4
State Board of Education	16
Emergency Management Agency	1
Department of Employment Security	4
Environmental Protection Agency	3
Farm Development Authority	2
Department of Financial Institutions	4
State Fire Marshal	4
Gaming Board	1
Guardianship and Advocacy Commission	1
Health Care Cost Containment Council	5
Health Facilities Planning Board	5
Historic Preservation Agency	1
Housing Development Authority	3
Department of Human Rights	2
Department of Human Services	35
Department of Insurance	11
Department of Labor	4
Legislative Information Service	2
Liquor Control Commission	2
Lottery	1

Department of Natural Resources	31
Department of Nuclear Safety	3
Pollution Control Board	11
Procurement Policy Board	2
Department of Professional Regulation	11
Department of Public Aid	26
Department of Public Health	31
Illinois Racing Board	16
Department of Revenue	58
Secretary of State	11
State Employees Retirement System	1
Department of State Police	5
State Police Merit Board	1
State Universities Retirement System	1
Student Assistance Commission	10
Department of Transportation	20
Treasurer	1
Department of Veterans Affairs	6

TOTAL	438
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2001
GENERAL RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Department of Central Management Services	1	0	0
Illinois Commerce Commission	1	1	1
State Board of Education	3	0	0
Department of Human Rights	1	0	0
Department of Human Services	2	0	0
Department of Natural Resources	2	0	0
Department of Professional Regulation	0	1	0
Department of Public Aid	1	2	0
Department of Public Health	0	1	0
Illinois Racing Board	1	1	0
Department of Revenue	1	0	0
TOTALS	13	6	1

**2001
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION**

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	4	67%
Procedural	2	33%
TOTAL	6	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
More Timely Rulemaking	3	23%
Further Rulemaking	5	38%
Statutory Authority/Legislative Intent	4	31%
Unduly Burdensome Regulation	1	8%
TOTAL	13	100%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
Statutory Authority	1	100%
TOTAL	1	100%

2001

EMERGENCY RULEMAKING

Section 5-45 of the IAPA specifies that agencies may use this short form rulemaking procedure, in which a rule is adopted without prior opportunity for public and JCAR comment, only if the agency finds that an emergency exists that requires the adoption of a rule within fewer days than normally required. The agency must state the emergency situation in writing and make an effort to notify the affected public. An emergency rule becomes effective immediately upon filing with the Secretary of State or at a stated date less than 10 days after filing and is effective for up to 150 days, after which a general rulemaking has to be adopted if the policy is to continue. No emergency rule may be adopted more than once in any 24 month period, with specified exceptions.

A set of 4 emergency rules creating mandatory reporting requirements for financial institutions under OBRE jurisdiction required reporting by 2/1/01 of information on high risk loans and defaults. The rules' announced objective was to permit OBRE to collect data for subsequent development of predatory lending rules (ultimately adopted on 5/17/01). At its January meeting, JCAR objected because the 2/1/01 reporting requirement, created by emergency rule not published until 12/29/00, was unduly burdensome on the financial institutions affected; because the rules failed to meet the criteria for emergency rulemaking; and to permit OBRE time to develop alternative reporting requirements with the benefit of public comment. OBRE repealed the emergency rules and developed reporting requirements within its permanent predatory lending package that set much more realistic timelines for retooling for the data collection.

DCFS rescinded the foster parents'/relative caregivers' right to appeal a placement of a child because the Department believed that children's safety and well-being could be threatened by a delay in a child's removal from a home when the Department has reason to believe the child is at risk of harm. DCFS is sole guardian of its wards and stated that it has sole responsibility for deciding issues relative to the child's placement. An incident reported in the 3/1/01 *Chicago Tribune* sparked concern over DCFS' authority to immediately remove an endangered child. DCFS reportedly served a notice for removal of a child caseworkers believed was being mistreated by the foster parent. Under DCFS rule, if the foster parent requests an appeal within 10 days after the notification, the move is stayed pending the appeal. A child may be removed from care without the required 10 days notice if there is an imminent risk of harm. In this case, the appeal was requested, DCFS did not determine there was an imminent risk of harm, and the child died while in the foster parent's custody. The foster parent was charged with the child's murder. Two elements seem to be at fault in this instance: DCFS' determination that the child was not at imminent risk of harm and DCFS policy that removal is stayed pending appeal. This rulemaking addressed neither of those issues, but rather repealed all appeal rights, raising serious due process questions. DCFS' aim of immediately removing the child from a potentially dangerous position could be served while retaining due process rights by allowing appeal after the fact. That is, the child could be removed from the placement pending appeal. DCFS argued that it does not want any appeal because it believes the judgment of its child welfare workers is superior to that of an Administrative Law Judge. Generally, the Children and Family Services Act guarantees foster families a right to appeal DCFS decisions. The statute does not suggest that placement decisions are not appealable. In fact, statute defines placement as a child welfare service and says child welfare services are appealable. Nothing in DCFS' arguments sufficiently diminishes this clear statutory directive. Statute does not, however, guarantee that a decision is stayed pending appeal, leaving DCFS the potential for protecting the child without denying appeal rights. In response to the JCAR Objection, DCFS repealed the emergency rule and proposed a rulemaking changing its policy of leaving a child in a setting pending appeal.

2001
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	1
Office of Banks and Real Estate	4
Department of Central Management Services	3
Department of Children and Family Services	4
Department of Commerce and Community Affairs	2
Illinois Commerce Commission	5
Community College Board	1
State Board of Education	2
Department of Employment Security	1
Housing Development Authority	1
Department of Human Services	9
Department of Natural Resources	5
Department of Nuclear Safety	2
Department of Public Aid	10
Department of Public Health	1
Department of Revenue	5
Secretary of State	10
Department of State Police	3
Treasurer	1
TOTAL	70

2001
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	1
Office of Banks and Real Estate	8
Department of Central Management Services	3
Department of Children and Family Services	4
Department of Commerce and Community Affairs	3
Illinois Commerce Commission	3
Community College Board	1
State Board of Education	2
Department of Employment Security	1
Department of Human Services	8
Department of Labor	1
Department of Natural Resources	5
Department of Nuclear Safety	2
Department of Public Aid	8
Department of Public Health	1
Department of Revenue	5
Secretary of State	9
Department of State Police	2
Treasurer	1
TOTAL	68

2001
EMERGENCY RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Office of Banks and Real Estate	0	4	0
Department of Children and Family Services	0	2	0
State Board of Education	0	1	0
Department of Revenue	0	1	0
Department of State Police	0	1	0
TOTALS	0	9	0

2001
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
No Unavoidable Emergency Existed	3	33%
Resulting Regulatory Deficiency	1	11%
Unduly Burdensome Regulation	4	44%
Statutory Authority/Legislative Intent	1	11%
TOTAL	9	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
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TOTAL	0	0%
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Basis for Suspension	Number of Suspensions	Percentage of Total
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TOTAL	0	0%
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2001

PEREMPTORY & EXEMPT RULEMAKING

Section 5-50 of the IAPA specifies that agencies may use this short form rulemaking procedure, in which the rule is adopted without prior opportunity for public and JCAR comment, only if the rulemaking is required by federal law, federal regulations, court orders or collective bargaining agreements and if the agency cannot exercise any discretion with respect to the rule content. Agencies must file the peremptory rule with the Secretary of State within 30 days after the change in rules is required.

Exempt rulemaking is a specialized form of rulemaking, similar to the peremptory rulemaking process, reserved for use by the Pollution Control Board under the Environmental Protection Act. PCB can use this short form procedure only to adopt Illinois regulations that are "identical in substance" to mandated federal regulations.

Using peremptory rulemaking procedures at the order of the federal judge in the *Corey H.* case, SBE adopted 2 peremptory rules modifying special education teacher certification requirements. The first repealed a rule limiting special education teachers with certificates endorsed for specific disabilities to teaching only students with those disabilities. The second created 2 categories of special education teachers: LBS (Learning Behavior Specialist) I and II. The rule further created a common core of standards for all special education teachers and specific content-area standards for LBS I (deaf or hard of hearing; blind or visually impaired; or a combinations of the two) and LBS II (speech-language pathologists; early childhood special education teachers; and learning behavior specialists). JCAR objected to and suspended the peremptory rules because they threatened the public interest, safety and welfare and particularly the welfare of Illinois' special education students. Educational professionals have argued that the teacher training scenario outlined in these rules will result in teachers who are not as qualified to teach children with special needs as are teachers trained under the previous standards. Additionally, the rules placed an unreasonable economic burden on special education teachers who will be required to undergo additional training for the new certification; on school districts that will need to hire special education teachers with appropriate credentials and to provide supplemental services to assist the children with disabilities in regular classroom instruction; on higher education facilities that will need to revamp their teacher preparation programs to implement these new special education common core standards; and on the State Board of Education, which is charged with implementing the new certification program standards. The economic hardship being created by these rulemakings could result in the availability of fewer qualified teachers to serve special education students. Believing it had no discretion in this matter because of the federal court order, SBE did not respond to JCAR's Objections/Suspensions. On 3/20/01, JCAR voted to file a joint resolution continuing the Suspensions. Section 5-125 of the IAPA states that if a joint resolution passes both houses of the General Assembly within 180 days after the JCAR action to suspend the rule, the rulemaking will be considered repealed and the Secretary of State must immediately remove the rule text from the *Illinois Administrative Code*. SJR 26 passed the Senate on 5/21/01 (56-0-0) and the House on 5/31/01 (117-0-0), the first time since enactment of the IAPA that this has occurred. The policy embodied in these 2 rulemakings continues to exist as policy outside rule, based not on State statute but rather on federal court order.

2001
PEREMPTORY & EXEMPT RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	3
Department of Central Management Services	3
Pollution Control Board	13
TOTAL	19

2001
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	3
Department of Central Management Services	3
State Board of Education	1
Pollution Control Board	20
TOTAL	27

2001
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
State Board of Education	0	1	1
Pollution Control Board	3	0	0
TOTALS	3	1	1

2001
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
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Economic Impact/Regulatory Deficiency	1	100%
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TOTAL	1	100%
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Basis for Recommendation	Number of Recommendations	Percentage of Total
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Resulting Regulatory Deficiency	1	33%
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Further Rulemaking	1	33%
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Procedural	1	33%
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TOTAL	3	100%
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Basis for Suspension	Number of Suspensions	Percentage of Total
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Economic Impact/Regulatory Deficiency	1	100%
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TOTAL	1	100%
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2001
JCAR ASSESSMENT OF
APPROPRIATNESS OF AGENCY RESPONSE
TO JCAR ACTION

AGENCY	ASSESSMENT				
	APPROPRIATE	FAILURE TO REMEDY	JOINT RESOLUTION	JCAR WILL MONITOR	NO COMMENT
Office of Banks and Real Estate				4	
Department of Central Management Services	1				
Department of Children and Family Services	2				
Illinois Commerce Commission			1		
State Board of Education	2		1	1	
Department of Human Rights	1				
Department of Human Services		1		1	
Department of Natural Resources	2				
Pollution Control Board	3				
Department of Professional Regulation		1			
Department of Public Aid	1				
Department of Public Health	1				
Illinois Racing Board	1				
Department of Revenue	2				
Department of State Police	1				
TOTAL	17	2	2	6	0

--- PUBLIC ACT REVIEW ---

Section 5-105 of the Illinois Administrative Procedure Act [5 ILCS 100/5-105] requires the Joint Committee on Administrative Rules to maintain a review program to monitor the implementation of new laws and changes in law through State agency rulemaking activities. The Committee fulfills this statutory obligation through its Public Act review program.

Under this program, the Committee staff annually reviews each new Public Act and makes a preliminary determination as to whether rulemaking might be necessary for proper implementation. After the list has been culled of those obviously not requiring rulemaking (appropriations, criminal and civil law, local government issues), the affected State agency is contacted for its opinion. If necessary, these written contacts are followed up with discussion between JCAR and the agency.

The final list of Public Acts for which JCAR and the agency agree that rulemaking is warranted is then monitored by the Committee as long as necessary to insure that progress is made toward implementation. The primary goal of the Committee in this program is to ensure that appropriate rules are put into effect in a timely manner, as required by Section 5-105 of the IAPA.

If suitable progress is not made, JCAR, by the vote of a majority of its members, can initiate an investigation into existing rules of the agency. If, after the agency's appearance before the Committee to explain its failure to adopt anticipated rules, the JCAR members are not satisfied with the agency response, the Committee can object to the agency's conduct and may initiate further legislation to clarify the issue.

The Committee reviewed 819 Public Acts that were enacted by the 90th General Assembly and 954 by the 91st G.A.

Frequently an agency is prompted to complete necessary rulemaking by conversation with JCAR or the agency enters voluntarily into written Agreements with JCAR to more thoroughly implement statutory requirements. At other times, JCAR votes a Recommendation or Objection based on a need for additional rulemaking. Fourteen such actions were taken in 1997, 11 in 1998, 8 in 1999, 13 in 2000 and 2 in 1996. This need for further rulemaking is frequently because Public Acts have not been fully implemented.

JCAR aggressively follows its statutory mandate to monitor the implementation of Public Acts. However, the Committee is seldom required to press an agency to implement a new Public Act. Agencies generally respond to JCAR inquiries that they agree rulemaking is necessary and by stating an approximate date for commencement of rulemaking activity. In some instances, they offer valid responses as to why rulemaking will not be necessary. Occasionally, the JCAR inquiry brings to an agency's attention a Public Act relating to its programs that had escaped its notice. The Public Act review program can be helpful to both the legislature and the agencies in meeting their obligation to put the laws of the State of Illinois into effect in a timely and effective manner.

COMPLAINT REVIEW PROGRAM

The Illinois Administrative Procedure Act authorizes the Joint Committee on Administrative Rules to review and investigate the rulemaking activities of State agencies when it receives a written complaint.

JCAR operates its complaint review program under Part 260 of its operational rules. Complaints may address one or more of the following: an existing rule of an agency; failure of an agency to fully or properly enforce its rules; absence of rules required by statute or necessary for the proper conduct of an agency program or function; and an agency rule that is applied, but not embodied in the rules of the agency promulgated pursuant to the IAPA.

Upon a receipt of a complaint, JCAR initiates a review to determine the need for a full investigation. Staff may raise questions or problems to discuss with the agency and will attempt to inform the agency of the substance of the complaint and any proposals for JCAR action prior to the meeting. Staff will report the results of the review and a proposal for action at a JCAR monthly meeting. A complaint may be placed on the agenda for a JCAR meeting by any JCAR member or the Executive Director if evidence exists that there are possible problems with the rules. If the same issues have been previously considered by JCAR, a complaint will not be placed on the agenda, unless the complaint reveals information not available to JCAR at the time the issue was considered and, if the information were available, it would have altered the outcome. Based on the complaint, JCAR may issue an Objection or Recommendation to existing rule, or to agency failure to maintain adequate rule, and afford the agency an opportunity to respond.

Complaints should be forwarded to the Executive Director of the Joint Committee at:

Joint Committee on Administrative Rules
700 Stratton Building
Springfield, Illinois 62706

LEGISLATIVE ACTIVITY RELATING TO JCAR AND THE IAPA

JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations. The following summaries of legislation affecting JCAR and the rulemaking process cover the 90th, 91st and 92nd General Assemblies.

In the 90th General Assembly, 6 Public Acts amending the IAPA affected rulemaking, 4 of which pertained to emergency rulemaking. PA 90-9 (eff. 7/1/97) was a budget implementation Act specifically authorizing emergency rulemaking for FY98 budget implementation. PA 90-587 and 90-588 (eff. 7/1/98) did the same for FY99 budget implementation and also allowed adjustment of hospital reimbursement rates by rule. JCAR has consistently maintained that inclusion of this special emergency rulemaking authority is not necessary; JCAR has never questioned the use of emergency rulemaking to implement a budget. PA 90-17 (eff. 7/1/97) authorized the Department of Public Aid to adopt emergency rules to implement federal provisions relating to Temporary Assistance for Needy Families (TANF). The Act also stated that such rules would be repealed on 6/1/98 and that the Department of Human Services may not promulgate similar rules on or after that date.

PA 90-372 (eff. 7/1/98) repealed obsolete provisions pertaining to JCAR review of agency forms. This was part of an omnibus bill sponsored by the Legislative Audit Commission to purge the statutes of obsolete provisions. JCAR now reviews any agency forms that are applicable to a rulemaking that is on 2nd Notice.

PA 90-155 (eff. 7/23/97) was a JCAR bill stating that requests for copies of agency rules, or materials incorporated by reference in rules, would not be deemed a Freedom of Information Act (FOIA) request unless labeled as such by the requestor. The purpose of this legislation is to simplify public access to rulemaking information.

In the 91st G.A., PA 91-24 (eff. 7/1/99) and PA 91-712 (eff. 7/1/00) continued the trend of statutorily authorized emergency rulemaking for budget implementation.

In the 92nd G.A., JCAR sponsored a bill amending the IAPA. PA 92-405 (eff. 8/16/01) is designed to solve several problems that arise from the fact that agencies are allowed to file rule text with the Secretary of State that comes from their own databases rather than the one maintained by JCAR and the Legislative Information System. The rule process has no office comparable to the Legislative Reference Bureau through which rules are drafted from a central database. Therefore, accuracy of background text and accurate depiction of changes is a problem. The new law adds a definition of "rulemaking" that explicitly requires use of underlining and striking to show changes in rule text published in the *Illinois Register* at 1st

Notice and adoption. Background text must match the current text of the *Illinois Administrative Code*. In addition, PA 92-405 clarifies that, once the rulemaking process has begun, an agency may not switch text from one proposed rulemaking to another. The IAPA is structured to insure both a public comment period and a JCAR review period. Switching text among rulemakings in the middle of the process thwarts the public's ability to track a proposal through the process.

SJR 26 (eff. 5/31/01) was introduced to continue 2 Suspensions of State Board of Education peremptory rulemakings adopted in response to federal court orders issued in the *Corey H.* case. SJR 26 passed the Senate by 56-0 and the House by 117-0, for the first time making a JCAR Prohibition or Suspension permanent through a joint resolution. Under Section 5-125(c) of the IAPA, "the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove the rule or portion of a rule from the collection of effective rules". However, SBE has been ordered by the federal court to proceed with implementing the court's rulings concerning special education that stem from the *Corey H.* case. SBE responded by posting its policies on its website, and litigation of this matter continues.

PA 92-10 (eff. 6/11/01) is the FY 02 automatic approval of emergency rulemaking to implement the budget. Additionally, JCAR's option to suspend such an emergency rule is specifically precluded. PA 92-10 hinders legislative oversight, through JCAR, of the initial budget implementation; however, no limitation is placed on JCAR's consideration of the permanent rulemakings that must follow the emergency rules if these provisions are to apply for more than 150 days.

PA 92-330 (eff. 1/1/02) amends both the IAPA and FOIA. Amendments to Section 5-40 of the IAPA require an agency to include in its 1st Notice published in the *Illinois Register* a descriptive title or description of any published study or research report used in developing the rule, the identity of the person who performed such study, and details of how to acquire a copy. The agency shall also make copies of the underlying data available to the public upon request if the data are not protected from disclosure under FOIA. An amendment to FOIA redefines "public record" to include the underlying data of a public body's factual reports, inspection reports, and studies. The exemption from inspection and copying for faculty course or research materials does not include information produced or prepared under a State contract and information that may be used to support a State policy or regulatory decision.

Three other Public Acts relate to issues that arose during the course of rules review:

- * PA 92-471 (eff. 8/22/01) amends the Children and Family Services Act to create the Direct Child Welfare Service Employee License Board within the Department of Children and Family Services and empowers the Board to make final determinations concerning revocation, suspension or reinstatement of an employee's direct child welfare service license after a hearing. JCAR suggested this clarification.
- * PA 92-188 (eff. 8/1/01) amends the Emergency Telephone System Act to exempt State correctional institutions and facilities from the Act's enhanced 9-1-1 provisions.
- * PA 92-484 (eff. 8/23/01) amends the sales tax Acts to clarify that "equipment" includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change on a product being manufactured or assembled for wholesale or retail sale or lease (or, in the case of graphic arts machinery and equipment, on a graphic arts product). JCAR suggested a statutory clarification.

JUDICIAL ACTIVITY RELATING TO

JCAR AND THE IAPA

Since JCAR's function is closely related to the interpretation of the Illinois Administrative Procedure Act (IAPA), it monitors and reports on court decisions and Attorney General opinions that affect the interpretation of the Act. One of the enumerated responsibilities of JCAR under the Act is "to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking" [5 ILCS 100/5-105(c)]. This summary highlights the most significant judicial actions since enactment of the IAPA and discusses current activity.

KEY INTERPRETATIONS OF THE IAPA

Two past decisions of the Illinois courts construing the IAPA in accordance with positions supported by JCAR are especially noteworthy. The cases involved an attempt by the Department of Public Aid to change the method by which it calculated Medicaid payments to nursing homes. In the first case, *Senn Park I* (*Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 504, 455 N.E.2d 153, 74 Ill. Dec. 123 (1983)), the First District Appellate Court held that DPA's failure to follow the IAPA rulemaking procedures invalidated a new method it utilized for calculating Medicaid payments. The court stated that the definition of a "rule" found in Sec. 1-70 of the IAPA (then Sec. 3.09) should be broadly construed in order to safeguard the public's right to comment on proposed agency policies. DPA's change in calculating the Medicaid payments, the court ruled, fell within the Sec. 3.09 definition of rule since it was a statement of general agency policy. As that policy was not adopted in compliance with the IAPA, it was invalid. In reaching its decision, the court narrowly construed the exceptions to the IAPA rulemaking procedures for matters relating to contracts and agency management.

The second case, *Senn Park II* (*Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 733, 455 N.E.2d 162, 74 Ill. Dec. 132 (1983)), grew out of DPA's attempt to implement the same Medicaid policy change through emergency rulemaking after the circuit court had invalidated the proposed change. Adopting the position long advocated by JCAR, the appellate court held that agency created "emergencies" do not justify bypassing the opportunity for public comment guaranteed by usual rulemaking procedures. DPA's resort to emergency rulemaking, the court noted, was the result of "avoidable administrative failure" to properly promulgate rules complying with the requirements of the IAPA in the first instance. DPA was precluded from relying upon its own mistakes to justify emergency rulemaking.

In *Senn Park Nursing Center v. Miller* (104 Ill. 2d 169, 470 N.E.2d 1029, 83 Ill. Dec. 609 (1984)), the Illinois Supreme Court considered the appeal of the *Senn Park I* and *II* and affirmed both decisions.

In *Senn Park I*, the court considered the appeal of a circuit court decision finding that DPA's inflation update procedure for nursing home reimbursement was invalid. On 12/14/79, DPA sent nursing home facilities copies of changes to the State Medicaid plan that included an amended procedure for the inflation update procedure. DPA published notices of the amended procedure in the newspaper of the widest circulation in each Illinois city with over 50,000 population. The notice was not published in the *Illinois Register* because it was refused by that publication. The notices did not provide an address where public comments could be submitted. Plaintiffs contended that the amended inflation update procedure was invalid because it was not promulgated in accordance with the rulemaking procedures of the IAPA.

DPA argued that the amended procedure was exempt from the notice and publication requirements by Sec. 5-35(c) of the IAPA (then Sec. 5(c)) because the State Plan is a contractual arrangement with the federal government, and thus was exempt under the contracts exception of the IAPA. Sec. 5-35(c) state that: "The notice and publication requirements of this Section do not apply to a matter relating solely to agency management...or to public property, loans or contracts."

After receiving approval from the legislative leaders, JCAR filed an amicus brief with the Illinois Supreme Court arguing that the inflation update procedure did not fall within the contracts exception. The Supreme Court agreed with the appellate court's interpretation of the contracts exception in which the lower court stated:

We are persuaded that under the IAPA, as under the Federal APA, a matter comes under the contract exception only when contracts are clearly and directly involved.... We believe that with regard to nursing homes, contracts, whether State-Federal or agency-provider, are not clearly and directly involved.... Accordingly, we conclude that the amended inflation update procedure is not a matter relating to contracts within the meaning of the IAPA. (118 Ill. App. 3d at 511)

The Supreme Court also stated that it is clear that the rulemaking procedure is intended to give interested persons an opportunity to submit their views and comments on rulemaking changes and that an agency must consider all submissions received. The court acknowledged that there are certain statutory exceptions to the notice and comment procedures, but that exceptions are of a limited nature and should be appropriately applied.

The court also agreed with the appellate court ruling that the amended inflation update procedure fell within the purview of the IAPA because the Public Aid Code incorporates the IAPA and the Code specifically requires rulemaking pursuant to the IAPA "during the process of establishing the payment rate for skilled nursing and intermediate care services, or when a substantial change in rates is proposed," in order to provide "an opportunity for public review and comment on the proposed rates prior to their becoming effective". [305 ILCS 5/5-5.7] (118 Ill. App. 3d at 512) The court found that the amended procedure fell within the

definition of “rule” found in the IAPA and thus the failure of DPA to follow the notice and comment procedures required by the IAPA rendered the amended procedure invalid.

Following the decision of the appellate court in *Senn Park I*, DPA promulgated Emergency Rule 4.14221 implementing the amended inflation update procedure pursuant to the IAPA (now Sec. 5-45). Plaintiffs sought a declaratory judgment, asking the court to declare Emergency Rule 4.14221 void because there was no “emergency” as that term is defined in the IAPA. On 12/30/80, DPA withdrew the emergency rule. On appeal, the appellate court held that although the rule was withdrawn, the validity of the rule was at issue in order to determine the amount of reimbursement the plaintiffs were entitled to in *Senn Park I*. The appellate court further held that the circuit court had erred in finding the emergency rule valid because there was no emergency as that term is defined under the IAPA.

In *Sleeth v. Illinois Department of Public Aid* (125 Ill. App. 3d 847, 466 N.E.2d 703, 81 Ill. Dec. 117 (1984)), the Third District Appellate Court considered an appeal from a DPA decision to terminate disability benefits in 5 cases. The court found that the procedure utilized by the Department (Manual Release No. 83.5), which required applicants who were denied disability benefits to submit proof of disability within 14 days after the filing of appeal, was a “rule” under the IAPA. The IAPA states:

“Rule” means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an Agency and not affecting private rights or procedures available to persons or entities outside the Agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

DPA contended that Manual Release 83.5 was merely an intra-office memorandum, not subject to the IAPA. The court reasoned that the memorandum affected private rights and procedures available to persons outside DPA and that this type of statement by an agency is specifically included within the definition of “rule” under the Act. Since the memorandum was not properly promulgated pursuant to the IAPA, the court held the rule invalid and determined that the procedures followed by DPA violated State law.

In *Kaufman Grain Co., Inc. v. Director, Department of Agriculture* (179 Ill. App. 3d 1040, 534 N.E.2d 1259, 128 Ill. Dec. 654 (1989)), the Fourth District Appellate Court held that DOA had no statute or rule that allowed it to settle disputes between a grain producer and a grain dealer or a grain warehouse. DOA improperly relied on policy that was not properly promulgated as rules in accordance with the IAPA and, therefore, was without authority to adjudicate such grain disputes. The *Kaufman* case is significant for the ruling of the court concerning attorney’s fees. Sec. 10-55 of the IAPA provides that, in any case in which a party has any administrative rule invalidated by a court for any reason, the court shall award the party

bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. The appellate court ruled that Kaufman was entitled to the award of attorney's fees it reasonably incurred in this litigation, including the fees incurred in the proceedings before the Department. The court stated that Sec. 10-55 of the IAPA gives those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. Therefore, the court awarded fees for the proceedings before DOA, as well as fees incurred in administrative review proceedings, noting that proceedings before an administrative agency are quite often more costly and time consuming than administrative review proceedings. The *Kaufman* case illustrates trends of the courts to rule unfavorably against agencies that have not promulgated their policies properly under the IAPA. The *Kaufman* decision specifically cites *Senn Park* and further strengthens the precedent it established.

In *Coronet Insurance Company v. John E. Washburn, Director of Insurance of the State of Illinois* (201 Ill. App. 3d 633, 558 N.E.2d 1307, 146 Ill. Dec. 973 (1990)), the First District Appellate Court of Illinois held that an administrative agency may enact rules and regulations as limited by the authorizing statutory language; that an administrative rule carries with it the same presumption of validity as the statute; and a rule that is consistent with the spirit of the statute and furthers its purpose will be sustained. The appellate court also ruled that DOI's failure to give at least 45 days notice of a proposed rule to the general public did not constitute violation of the IAPA, since the Act provides that changes in the text of a proposed rule may be made during the First Notice period and that such changes need not be published again prior to submission to JCAR.

In *Berrios v. Rybacki* (236 Ill. App. 3d 140, 603 N.E. 2d 659, 177 Ill. Dec. 589 (1992)), the First District Appellate Court held that award of attorneys fees under the IAPA for invalidation of an administrative rule did not warrant the application of a multiplier of 3 to reflect the contingent nature of the action, but that legal fees were to be limited to an amount for reasonable expenses incurred or paid in the particular successful action.

In *CIPS v. Illinois Commerce Commission* (268 Ill. App. 3d 471, 644 N.E. 2d 817, 206 Ill. Dec. 49 (1994)), the Fourth District Appellate Court ruled that JCAR did not create an impermissible filing prohibition when it informed ICC it would lift its filing prohibition on a proposed rule formulating rental rates for cable TV attachments to utility poles if the ICC removed allocation of the portion of pole neutral space to cable television.

RECENT JUDICIAL ACTION AND LITIGATION

- In *R.I. Polk & Co. v. Ryan* (296 Ill. App. 3d, 694 N.E.2d 1027, 230 Ill. Dec. 749 (1998)) the Fourth District Appellate Court held that Secretary of State George Ryan's rulemaking barring sale of commercial driver's license information was within his statutory authority and adopted pursuant to the IAPA. JCAR had objected to the rule, citing undue impact on small business. The Secretary adopted the rulemaking over JCAR's Objection and suit was filed seeking injunctive relief and a declaratory judgment.

- Illinois Attorney General Opinion 99-10 concluded that the Department of Labor is not expressly authorized under either the Prevailing Wage Act or IAPA to adopt rules governing its procedures and policy for implementation of the Prevailing Wage Act, but was so empowered with respect to disbarment proceedings under the PWA. The Opinion noted that prevailing wage determinations are primarily a fact finding exercise and that promulgation of administrative rules was not necessary to accomplish that end.
- In *Weyland v. Manning* (309 Ill. App. 3d 542, 723 N.E.2d 387, 243 Ill. Dec. 355 (2000)), plaintiffs filed an action contesting a rule adopted by the Department of Natural Resources establishing a restricted boating zone on Griswold Lake. One element at issue was the adequacy of the Second Notice filed by DNR with JCAR. The Second District Appellate Court held that DNR complied with JCAR rule requirements that it list and analyze all comments concerning the rule and that its failure to list in the Second Notice persons who had requested a public hearing did not invalidate the rule.
- Payday/Predatory Lending Rules: Two similar topics, the regulation of short term (payday or cash for car title) loans and high risk mortgage loans, involved rules ultimately adopted by the Department of Financial Institutions and/or Office of Banks and Real Estate:
 Payday: After JCAR Objection and after a Filing Prohibition expired, DFI adopted rules regulating the payday loan/cash for car title industries that were immediately challenged by *Southwest Development Corp, et al., v. Vega* (Circuit Court of Cook County; No. 01-CH-08906). The trial judge ruled in favor of DFI, upholding the rules. An appeal is pending before the appellate court.
 Predatory: After JCAR review and approval of 7 rules regulating high risk mortgage activity and OBRE adoption of the rules, *Illinois Association of Mortgage Brokers v. OBRE* was filed in the U.S. District Court, Northern District of Illinois (No. 01-C-5151). The suit is solely against OBRE, although DFI has filed almost identical rules as well, and challenges the rules on the basis that federal law preempts State regulation in this matter. The case is being appealed by the plaintiff after an adverse district court decision.
- In *Flynn v. Ryan* (Circuit Court of Will County; No 99-CH-340), on 9/8/00, Judge Thomas Ewert ruled the entire State Gift Ban Act unconstitutional and enjoined Governor Ryan and Attorney General Ryan from enforcing its provisions anywhere within the State. The case is presently on appeal before the Illinois Supreme Court. If the Act stands, various State agencies will need to adopt related rules. To date, the following agencies have acted: **State Board of Elections** is not enforcing its reporting rule adopted prior to the ruling. On the issue of establishing penalties for violating the reporting requirements, SBEL is awaiting guidance from the Supreme Court before proceeding.
 The **Governor's Office** prescribed organizational/procedural rules for his Ethics Commission. CMS (the lead agency acting for the Governor's Office) states it is not currently implementing its Commission rules, which were adopted prior to the judge's injunction, and is awaiting guidance from the Supreme Court.
Secretary of State White (not a party to the action) has filed rules establishing the SOS

Ethics Commission required by the Act. The Secretary is reportedly acting as though the Act were valid until a ruling is made by the Supreme Court. SOS staff conceded that, if an employee is believed to have acted contrary to the Act or rules, workplace discipline would be tenuous until guidance is received from the Supreme Court.

Attorney General Ryan has proposed rules establishing his Ethics Commission but has not yet moved the rulemaking to Second Notice (JCAR consideration).

- *Corey H. v. Board of Education of City of Chicago* (No. 92-C-3409, U.S. District Court for the Northern District of Illinois, Eastern Division). In 1992, disabled students brought an action against the Chicago Board of Education and State Board of Education alleging systemic failures to educate children with disabilities in the least restrictive environment (LRE), as required by the federal Individuals with Disabilities Education Act (IDEA). SBE and CBE entered into a settlement agreement with the plaintiffs. Under the settlement agreement, Judge Gettleman ordered SBE to change its policy on certification structure and standards for special education teachers through preemptory rulemaking. SBE filed 2 preemptory rulemakings to change special education teacher certification endorsement and create common core standards for all teachers. The first preemptory rule (titled Certification; 23 Ill Adm Code 25; 24 Ill Reg 16109) was objected to by JCAR on 11/14/00. SBE refused to withdraw the preemptory rule, stating it was not in a position to do so because it was under a federal judge's order. The rule was then suspended by JCAR on 2/21/01. The second preemptory rule (Standards for Certification in Special Education; 23 Ill Adm Code 28; 24 Ill Reg 16738) was objected to and suspended by JCAR on 1/9/01. SBE did not respond. On 2/27/01, Judge Gettleman ordered SBE to implement both rulemakings, regardless of the JCAR suspensions.

Pursuant to IAPA requirements, SJR 26 was introduced in the General Assembly to continue the 2 suspensions. (Sec. 5-125 of the IAPA states that if a joint resolution passes both houses of the General Assembly within the 180 days of the JCAR suspension, the rule will be considered repealed and the Secretary of State must immediately remove the rule from the collection of the effective rules. SJR 26 passed the Senate on 5/21/01 with a vote of 56-0-0 and passed the House on 5/31/01 with a vote of 117-0-0. This was the first time a joint resolution of this nature has passed both houses of the GA. As directed by Judge Gettleman, SBE implemented the settlement order as agency policy outside rule.

Downstate special education teachers and students then filed a motion to intervene, to allow them input into the teacher certification policies that will be effective statewide (*Reid L. v. Illinois State Board of Education and Corey H.*, No. 01-C-4180). Judge Gettleman denied the *Reid* request and an appeal of his denial is pending in the U.S. 7th Circuit Court of Appeals.

HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2001

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	2000	2001
Administrative Rules, Joint Committee on	3	5	1	1	1	-	-	-	3	5	-	-	-	-	1	7	2	-	-	-	-	-	-	-
Aging, Department on	5	1	6	6	4	4	6	3	2	1	3	4	5	2	5	2	5	3	6	7	2	1	2	1
Agriculture, Department of [16]	14	21	14	16	24	18	41	15	11	26	21	16	7	2	18	17	13	22	15	14	17	18	7	13
Attorney General	3	1	2	-	3	2	3	2	2	2	3	-	1	1	1	-	-	1	-	-	3	2	3	-
Attorney General's Ethics Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Auditor General	7	5	2	1	4	1	3	1	-	-	-	1	2	-	-	-	-	2	-	-	-	3	-	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Banks and Real Estate, Commissioner of [7]	3	6	6	7	7	1	1	2	7	6	10	5	5	12	8	2	2	7	11	10	7	6	11	3
Building Commission, Illinois	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital Development Board	2	1	3	-	3	-	2	9	4	6	3	2	-	-	2	1	-	2	11	8	6	2	4	8
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	2	3	-	2	1	-	2	1	1	-	-	2	-	1	-	1
Central Management Services, Dept. of [2]	11	9	16	16	13	16	18	10	14	11	11	11	14	14	19	14	6	16	15	12	11	16	19	18
Children & Family Services, Department of	2	2	60	1	26	10	23	14	22	3	9	5	7	6	12	13	16	22	23	20	13	8	22	13
Civil Service Commission	-	-	-	2	-	-	2	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Civil Service Merit Board, University	-	-	-	3	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Civil Service System, State Universities	2	2	-	-	-	-	2	1	1	1	2	1	-	-	-	-	-	1	-	-	-	-	-	-
Commerce & Community Affairs, Dept. of [15]	1	1	3	1	8	4	20	29	29	18	17	17	19	16	12	8	7	4	5	3	4	5	8	7
Commerce Commission	17	11	19	10	21	19	43	22	20	86	24	26	14	16	16	16	16	10	10	14	12	6	15	16
Community College Board	-	1	-	-	1	2	3	2	2	2	5	5	3	2	3	2	4	-	5	2	-	3	1	1
Comm. Dev. Finance Corp. (Treas)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Comptroller	1	2	4	3	4	4	3	1	5	3	4	2	2	-	1	2	3	-	1	2	1	1	3	3
Comptroller's Merit Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-
Cook County Local Records Commission (SOS)	-	-	-	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Corrections, Department of	82	23	38	24	15	66	-	1	10	8	5	8	7	4	5	6	-	4	4	6	4	1	-	2
Court of Claims	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Criminal Justice Information Authority	1	2	-	-	-	-	-	1	1	2	-	1	2	-	2	2	-	-	1	1	1	-	1	4
Debt Collection Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Development Finance Authority	-	-	-	-	-	-	-	-	4	1	-	-	-	-	2	-	-	-	-	-	-	-	-	-
Developmental Disabilities Planning Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-
Dry Cleaners Emergency Response Trust Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-
Education, State Board of	3	4	9	8	3	7	5	12	30	12	9	10	10	5	9	10	10	10	7	6	18	14	4	22
Educational Facilities Authority [19]	-	-	1	-	2	3	2	1	4	2	-	1	-	-	-	1	-	1	1	1	-	1	-	1
Educational Labor Relations Board	-	-	-	-	-	-	4	3	-	-	2	5	-	-	2	-	-	-	-	-	-	-	-	1
Educational Opportunity, Consortium for	-	-	-	-	-	-	-	-	1	-	-	-	2	1	-	-	-	-	-	-	-	-	-	-
Elections, State Board of	6	1	8	3	7	3	4	1	-	3	-	7	3	2	-	2	1	1	1	2	5	6	1	-

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AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	2000	2001
Emergency Management Agency [3]	-	-	-	2	9	7	-	-	3	2	2	-	-	-	1	2	4	-	-	-	-	-	-	4
Employment Security, Department of	-	-	-	-	-	-	3	13	10	5	19	16	11	14	8	13	8	3	2	5	1	1	4	2
Environmental Protection Agency	7	12	10	16	18	20	21	10	8	14	16	8	6	4	14	4	3	6	5	11	6	5	7	8
Experimental Organ Transplantation Proced. Bd.	-	-	-	-	-	-	-	1	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	-	-	-	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Farm Development Authority	-	-	-	-	1	1	2	1	2	3	2	-	-	-	1	1	-	-	-	-	1	1	2	1
Financial Institutions, Department of	1	10	8	3	-	3	9	4	2	3	4	1	2	1	4	3	4	4	1	3	5	2	4	1
Fire Marshal	1	2	1	1	7	3	5	3	3	5	1	4	4	5	6	1	3	6	5	5	6	-	3	3
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	1	3	2	1	2
Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-
Governor's Ethics Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Governor's Purchased Care Review Board	1	6	2	1	-	1	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guardianship & Advocacy Commission	-	-	2	1	2	2	1	3	-	-	-	-	1	-	1	-	-	-	-	-	-	-	6	-
Health Care Cost Containment Council [21]	-	1	5	1	1	-	-	10	1	3	2	1	1	3	2	3	2	5	-	3	-	-	5	-
Health Facilities Authority	5	2	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	4	-	-	-	-	-
Health Facilities Planning Board	-	1	-	-	-	-	2	1	9	3	3	7	-	3	4	5	4	1	2	5	3	7	14	3
Hearing Aid Consumer Protection Board	-	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Higher Education CPO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-
Higher Education, Board of	-	3	2	5	-	-	20	5	3	-	1	6	-	-	1	1	1	-	-	-	1	4	-	-
Historic Preservation Agency	-	-	-	-	-	-	-	-	-	-	-	-	1	2	2	-	-	-	1	1	-	-	1	-
Housing Development Authority	-	-	1	-	-	3	3	5	1	1	1	1	3	2	5	1	3	1	-	9	3	2	1	3
Human Rights Commission [17]	2	3	-	1	1	2	2	-	1	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-
Human Rights, Department of	-	-	1	5	4	3	1	-	1	-	-	-	-	-	-	1	1	3	1	1	2	1	1	1
Human Services, Department of [11] [1][18]	23	15	12	13	12	29	37	26	65	51	34	30	40	30	25	34	27	27	38	24	106	69	46	39
Industrial Commission	4	1	3	2	3	1	2	7	2	-	-	-	6	1	2	-	-	4	-	-	-	-	-	-
Insurance, Department of	15	14	17	13	13	4	25	9	11	9	12	13	13	12	13	15	6	19	13	13	23	9	18	15
Investments, Illinois State Board of	-	3	1	-	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Labor, Department of	5	6	3	7	8	8	5	3	3	1	2	1	3	2	9	-	1	4	2	3	1	1	12	3
Law Enforcement Commission	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Law Enforcement Training & Stand. Bd. [20]	-	-	-	-	-	4	1	-	2	1	-	2	2	1	1	-	-	1	-	-	1	-	-	-
Legislative Information System	1	-	2	-	2	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-
Legislative Space Needs Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	1	1	-	-
Liquor Control Commission	2	-	-	-	-	1	-	-	-	-	1	-	-	-	-	1	-	1	-	1	1	3	-	2
Local Government Records Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-

HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2001

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	2000	2001
Local Labor Relations Board	-	-	-	-	-	-	4	1	8	-	4	-	4	-	-	-	-	-	-	-	-	-	-	-
Lottery, Department of	-	2	-	-	-	-	-	-	2	-	2	-	-	-	3	-	2	1	1	-	2	-	1	1
Medical District (Center) Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Military Affairs, Department of [5]	-	-	-	-	-	-	-	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Mississippi River Parkway Commission	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	-	-	-	-	-	-
Natural Resources, Department of [10]	80	93	81	116	41	41	41	44	84	36	24	58	48	60	73	34	25	55	31	35	60	40	25	52
Nature Preserves Commission	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-
Northeastern Illinois Planning Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-	-	1	-
Nuclear Safety, Department of	-	-	1	2	3	3	4	3	19	7	7	8	8	2	10	15	8	5	11	5	12	8	5	6
Pollution Control Board	18	11	18	13	18	23	21	32	43	53	73	71	54	36	29	24	66	11	34	31	17	7	30	12
Prairie State 2000 Authority	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-
Prisoner Review Board	2	-	-	-	1	-	-	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-
Procurement Policy Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	2
Professional Regulation, Department of [6]	11	11	22	15	16	-	-	17	10	14	14	15	7	13	16	19	17	13	17	19	26	28	22	10
Property Tax Appeal Board	-	-	-	-	-	-	-	1	-	-	-	1	-	-	-	-	-	-	1	3	1	1	-	-
Public Aid, Department of	46	56	47	66	40	86	67	94	82	87	107	67	94	78	84	65	43	75	53	39	30	19	23	30
Public Health, Department of	42	43	55	44	92	91	53	25	44	27	50	45	48	28	46	53	28	29	30	46	38	18	41	30
Racing Board	10	14	19	10	22	9	7	13	14	9	11	5	40	17	20	25	27	37	16	23	4	4	17	20
Records Commission, State	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Retirement System, State Employees	2	3	5	3	4	1	2	3	-	-	1	-	2	1	1	-	-	-	1	2	2	1	2	1
Retirement System, Teachers	2	-	-	-	-	-	-	2	-	-	1	-	1	1	2	1	1	1	1	2	5	1	2	1
Retirement System, State Universities	1	-	-	-	-	1	-	-	-	-	-	1	1	-	-	-	-	-	1	3	-	2	-	1
Revenue, Department of	11	16	24	45	14	11	9	7	24	19	20	24	35	25	9	20	20	21	32	12	22	11	77	51
Rural Bond Bank	-	-	-	-	-	-	-	-	-	-	-	-	3	-	1	-	-	-	-	-	-	-	-	-
Savings Institutions, Board of [12]	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-
Secretary of State	15	21	12	26	14	31	20	19	8	18	30	31	21	14	13	21	13	14	21	27	16	10	14	13
Southern Illinois University Board of Trustees	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Specialized Care for Children, Division of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	1	-
Sports Facilities Authority	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-
State Labor Relations Board	-	-	-	-	-	-	4	1	8	-	4	-	4	-	-	4	-	-	5	-	-	-	-	-
State Mandates Board of Review	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Police, Department of [14]	2	-	1	-	1	2	2	1	2	1	4	-	2	1	3	2	-	1	4	2	4	-	4	5
State Police Merit Board [8]	2	2	1	-	1	1	4	1	2	2	2	2	-	1	2	1	1	1	2	3	1	1	1	1
State's Attorneys Appellate Prosecutor [4]	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2001

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	2000	2001
Student Assistance Commission [9]	1	3	4	11	4	2	1	14	10	13	5	9	1	5	10	15	13	8	19	35	15	8	15	10
Toll Highway Authority, Illinois State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	1	1	-	1	2	-
Transportation, Department of [10]	13	13	13	17	5	5	10	16	23	16	25	18	15	32	21	28	18	22	12	13	23	17	19	16
Travel Control Board, Governor's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Travel Control Board, Higher Education	-	1	1	1	2	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Control Board, Legislative	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treasurer	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
University of Illinois, Board of Trustees	1	1	-	-	-	1	1	-	-	-	-	4	-	2	5	7	-	-	-	-	4	-	3	2
U of I Board of Examiners (CPA Licensure)	-	-	-	1	-	1	1	1	1	-	2	2	-	-	1	1	1	1	-	4	-	-	1	-
Veterans' Affairs, Department of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Obsolete Boards & Commissions	1	2	2	2	-	1	1	-	5	7	-	-	-	-	5	-	-	1	-	1	-	-	12	1
Obsolete Higher Ed Boards (BOR, BOG) [13]	9	3	-	11	1	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	502	475	568	563	510	583	604	532	696	614	627	589	586	483	583	537	440	487	488	512	554	384	553	467

This table illustrates the number of rulemakings commenced by each agency during the calendar year.

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. Also includes obsolete Trustees of State CC of E. St. L. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] In 1984, the Dangerous Drugs Commission was absorbed by DASA, which was then absorbed by DHS in 1997. [19] IEFA absorbed the Higher Education Loan Authority in c. 1988. [20] In 1993, the Local Gov. Law Enforcement Officers Training Board was renamed the Law Enforcement Training & Standards Board. [21] HCCC absorbed Health Finance Authority (1979-82) duties in 1984.

HISTORY OF EMERGENCY RULEMAKING BY AGENCY

1978 THROUGH 2001

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	2000	2001
Administrative Rules, Joint Committee on	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Aging, Department on	4	1	1	1	1	-	-	-	-	-	-	1	-	3	5	1	1	2	1	-	-	-	-	-
Agriculture, Department of [16]	1	3	2	-	-	-	1	2	1	1	2	1	-	1	-	3	1	1	1	-	1	-	3	1
Attorney General	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-
Banks and Real Estate, Commissioner of [7]	1	1	4	1	1	-	-	1	3	1	4	-	1	1	3	-	1	4	-	-	5	1	10	4
Capital Development Board	-	-	2	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1	3	2	-	-
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	1	-	-	1	1	-	1	-	-	-	-	-	-	-	-	-
Central Management Services, Department of [2]	9	5	4	3	5	3	13	6	6	4	8	3	4	3	7	-	2	1	8	4	6	6	4	3
Children & Family Services, Department of	-	-	2	-	4	1	-	-	1	1	-	-	2	4	1	2	4	6	-	7	1	1	5	4
Commerce & Community Affairs, Department of [15]	1	-	-	-	-	-	-	6	5	2	1	8	2	2	1	3	-	-	-	1	1	2	4	2
Commerce Commission	1	1	5	-	2	5	3	1	5	3	4	2	-	1	1	-	2	-	2	4	6	-	8	5
Community College Board	-	-	-	-	-	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	1
Comptroller	-	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	1	-	1	-
Corrections, Department of	21	8	4	2	15	-	-	-	-	-	-	-	3	-	1	4	-	-	1	4	-	-	-	-
Criminal Justice Information Authority	-	2	-	-	-	-	-	1	-	1	-	1	-	-	-	-	-	-	1	1	1	-	1	-
Dangerous Drugs Advisory Council	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Development Finance Authority	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Dry Cleaners Emergency Response Trust Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Education, State Board of	2	-	3	1	-	3	-	9	5	2	-	2	2	-	-	-	1	1	2	-	8	1	2	2
Educational Finance Authority	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Educational Labor Relations Board	-	-	-	-	-	-	4	1	-	-	1	1	-	-	1	-	-	-	-	-	-	-	-	-
Educational Opportunity, Consortium For	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Elections, State Board of	3	1	4	1	2	1	2	-	-	-	-	-	1	-	-	1	-	1	1	-	1	2	1	-
Emergency Management Agency [3]	-	-	-	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Employment Security, Department of	-	-	-	-	-	-	3	-	-	-	4	5	1	-	2	2	2	1	-	-	-	-	1	1
Environmental Protection Agency	2	3	3	2	-	-	2	2	2	3	-	1	-	-	1	-	-	1	-	2	-	-	-	-
Experimental Organ Transplantation Proced. Bd.	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Farm Development Authority	-	-	-	-	1	1	1	2	3	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Financial Institutions, Department of	-	1	2	2	-	-	-	1	1	1	-	-	1	-	1	1	-	-	1	-	3	1	-	-
Fire Marshal	-	1	1	-	2	1	2	-	2	-	-	3	1	-	-	2	-	-	-	-	1	-	-	-
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	-	-
Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Governor's Purchased Care Review Board	1	4	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guardianship and Advocacy Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Health Care Cost Containment Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Health Coordinating Council, Statewide	3	-	-	1	-	-	-	-	-	-	-	-	-	-	2	3	1	1	-	3	-	-	-	-
Health Facilities Planning Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	1	-	2	-	-	1	-	-	-
Health Finance Authority	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

HISTORY OF EMERGENCY RULEMAKING BY AGENCY

1978 THROUGH 2001

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	2000	2001	
Higher Education CPO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	
Higher Education, Board of	-	1	-	1	-	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-	-	
Higher Education Loan Authority, Independent	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Housing Development Authority	-	-	-	-	-	1	1	1	-	1	-	-	3	-	2	1	2	1	-	3	-	-	1	1	
Human Rights Commission [17]	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	
Human Rights, Department of	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	
Human Services, Department of [11][1]	1	1	-	1	3	1	1	1	5	1	1	4	2	3	14	31	1	3	2	2	8	22	29	16	9
Industrial Commission	-	-	1	2	2	-	2	2	2	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	
Insurance, Department of	1	-	4	2	2	3	-	1	5	-	-	1	-	-	1	4	-	1	-	3	-	1	3	-	
Investments, Illinois State Board of	-	1	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	
Labor, Department of	-	-	1	3	-	3	3	2	-	-	-	-	1	1	-	1	1	-	-	-	-	-	1	-	
Law Enforcement Commission	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Legislative Information System	1	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Liquor Control Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Local Gov. Law Enf. Officers Training Bd.	-	-	-	-	-	1	-	-	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	
Local Labor Relations Board	-	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Lottery, Department of	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	
Medical Center Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	
Natural Resources, Department of [10]	21	18	14	14	6	5	1	7	4	1	7	6	3	6	6	5	6	4	-	1	4	5	1	5	
Nuclear Safety, Department of	-	-	-	-	1	-	2	1	1	1	-	-	-	-	-	2	1	2	1	1	6	-	-	2	
Pollution Control Board	2	1	1	3	1	1	3	3	2	-	1	-	1	-	-	3	1	1	1	1	-	-	-	-	
Prairie State 2000 Authority	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	
Prisoner Review Board	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Professional Regulation, Department of [6]	3	3	2	1	5	5	6	1	1	3	2	6	-	5	2	2	-	1	1	4	3	-	2	-	
Public Aid, Department of	19	14	4	3	4	2	6	6	9	18	17	15	18	19	27	17	6	29	15	22	13	10	6	10	
Public Health, Department of	12	12	11	1	15	2	2	2	3	1	18	3	13	8	4	21	6	5	13	7	1	3	2	1	
Racing Board	6	7	2	-	2	2	1	2	-	-	1	1	-	2	1	3	1	4	1	-	-	3	-	-	
Retirement System, State Employees	-	-	3	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	
Retirement System, Teachers	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	2	3	-	-	-	
Retirement System, State Universities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	
Revenue, Department of	-	1	9	1	3	-	1	-	2	-	4	2	1	3	2	5	-	3	2	1	4	5	6	5	
Rural Bond Bank	-	-	-	-	-	-	-	-	-	-	-	-	3	-	1	-	-	-	-	-	-	-	-	-	
Secretary of State	3	2	-	1	1	3	3	6	2	-	-	1	-	3	2	5	2	1	7	4	3	3	7	10	
Specialized Care for Children, Division of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	
Sports Facilities Authority	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	
State Labor Relations Board	-	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
State Mandates Board of Appeals	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
State Police, Department of [14]	1	-	-	-	-	-	-	-	1	-	-	-	1	1	1	-	-	-	2	-	-	-	-	3	

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